

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 51

FOREST E. LEVERS, ADMINISTRATOR, ETC.,
PETITIONER,

vs.

A. V. ANDERSON, DISTRICT SUPERVISOR,
ALCOHOL TAX UNIT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 27, 1945.

CERTIORARI GRANTED MAY 7, 1945.

United States Circuit Court of Appeals

TENTH CIRCUIT.

No. 2939.

FOREST E. LEVERS, Administrator of the Assets of a partnership formerly consisting of Forest E. Levers and Ray E. Levers, deceased, PETITIONER,

vs.

A. V. ANDERSON, District Supervisor, Alcohol Tax Unit,
RESPONDENT.

ON PETITION TO SET ASIDE ORDERS OF ALCOHOL TAX UNIT.

FILED JULY 6, 1944.

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Pleas and proceedings in the United States Circuit Court of Appeals for the Tenth Circuit at the November Term, 1944, of said Court, before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

On the 6th day of July, A. D. 1944, a transcript of the record, pursuant to a petition to set aside orders of the Alcohol Tax Unit, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Tenth Circuit, in a certain cause wherein Forest E. Levers, Administrator of the Assets of a partnership formerly consisting of Forest E. Levers and Ray E. Levers, deceased, was petitioner, and A. V. Anderson, District Supervisor, Alcohol Tax Unit, was respondent, which said transcript, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Tenth Circuit, is in the words and figures following:

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE TENTH CIRCUIT.

In the Matter of the Appeal of
FOREST E. LEVERS, ADMINISTRATOR.

No. 2939.

Petition.

Comes now petitioner and states to the Court:

1. That he is, and at all times mentioned herein was, the duly appointed, qualified, and acting administrator of the assets of a partnership theretofore composed of Forest E. Levers and Ray E. Levers, deceased, which said partnership was engaged in the wholesale liquor business.

2. That upon his appointment as such administrator by the Probate Court of Chaves County, New Mexico, and being ordered by said Court to continue the business of the partnership, petitioner applied for and received from the Alcohol Tax Unit of the United States Treasury Department a Wholesaler's Basic Permit for the sale of alcoholic liquors. That, thereafter, petitioner, as such administrator, made application for a new Wholesaler's Basic Permit and for an Importer's Permit. That, upon charges made and proceedings had, the said Alcohol Tax Unit revoked the basic permit theretofore issued to petitioner and refused to issue the new permits. And that, thereafter and under date of May 8, 1944, petitioner was ordered by said Alcohol Tax Unit to discontinue the business of the Estate.

3. That petitioner is a citizen and resident of Roswell, Chaves County, New Mexico, and the estate of which he is administrator is being probated in the Probate Court of said County and State. And that this appeal is made in accordance with the provisions of section 4(h) of the Federal Alcohol Administration Act, of August 29, 1935, 49 Stat. 977.

4. That the aforesaid orders heretofore made by said

Alcohol Tax Unit were improvidently and arbitrarily made and should be wholly set aside.

5. That petitioner relies upon the following points, all of which have been presented to and urged upon said Alcohol Tax Unit, to-wit:

(1) That there is no legally sufficient charge upon which to base annulment proceedings.

(2) That there is no legally sufficient charge upon which to base a denial of petitioner's application for permits.

(3) That the Alcohol Tax Unit lacks power and jurisdiction to annul petitioner's permit or to refuse to issue a permit to him.

(4) That there is no substantial evidence that, on October 28, 1941, petitioner controlled any corporation or held any interest in any premises whereon liquor was sold at retail.

(5) That there is no substantial evidence that petitioner ever violated Sections 5(a) and/or 5(b) of the Federal Alcohol Administration Act.

(6) That there is no substantial evidence that petitioner ever had any dealings in interstate commerce with any retailer of alcoholic liquors.

(7) That there is no substantial evidence that petitioner's transactions had any substantial effect on interstate commerce.

(8) That there is no substantial evidence that petitioner's transactions ever prevented or hindered other wholesaler's from selling alcoholic liquors in interstate commerce to any retailer.

Wherefore, petitioner prays the Court for judgment setting aside the orders of the Alcohol Tax Unit heretofore made herein.

JAS. J. McNAMARA, Clovis, New Mexico,
Attorney for Petitioner.

Certificate of Service.

I hereby certify that I did, on this 15th day of May, A. D., 1944, serve a true copy of the foregoing Petition upon A. V.

Anderson, Esquire, District Supervisor, Alcohol Tax Unit, Internal Revenue Service, Treasury Department, Denver 2, Colorado, by depositing such copy in the Post Office at Clovis, New Mexico, properly addressed and with postage prepaid.

JAS. J. McNAMARA.

Filed May 18, 1944. Robert B. Cartwright, Clerk.

THE ADMINISTRATIVE TRANSCRIPT OF THE ADMINISTRATIVE RECORD.

United States of America

District of New Mexico

Alcohol Tax Unit

United States Treasury Department

I In the Matter of the Annulment of Wholesale Basic Permit No. 13-P-37 issued in the name of Levers Brothers (Forest E. Levers and Oran C. Dale d/b/a), 209 E. Second Street, Roswell, New Mexico

In the Matter of the Contemplated Denial of Application of Forest E. Levers, Co-partner, Forest E. Levers, Special Administrator of Levers Brothers, doing business as Levers Brothers, 209 East Second Street, Roswell, New Mexico, for Importer's Basic Permit

In the Matter of the Contemplated Denial of Application of Forest E. Levers, Co-partner, Forest E. Levers, Special Administrator of Levers Brothers, doing business as Levers Brothers, 209 East Second Street, Roswell, New Mexico, for Wholesaler's Basic Permit

Docket No. FA-6 FA-7 FA-8

Hearing at Albuquerque, New Mexico, January 19, 20 and 21, 1944

Before Hon. Thomas P. Fahey, Hearing Officer.

Appearances: For the United States: Josie A. Hatch, Acting Legal Adviser, 13th District, Alcohol Tax Unit; John M. Schooley, Special Investigator, 13th District, Alcohol Tax Unit. For Levers Brothers: James J. McNamara, Clovis, New Mexico.

2 The hearing was called to order on January 19, 1944, at 2 P. M. in the office of the Investigator in Charge, Alcohol Tax Unit, in the Rosenwald Building, Albuquerque, New Mexico.

Present and representing the United States Government: Josie A. Hatch, Acting Legal Adviser, 13th District, Al-

cohol Tax Unit, and John M. Schooley, Special Investigator, 13th District, Alcohol Tax Unit.

Present and representing Levers Brothers:

Forest E. Levers and attorney James J. McNamara.

The Hearing Officer administered the following oath to Mrs. Jessie Blessum as reporter:

"You do solemnly swear that you will well and truly report stenographically and transcribe the testimony given orally, and receive intact the exhibits offered in evidence in this hearing, in which the parties are the United States of America and Forest E. Levers and the Estate of Raymond E. Levers, doing business as Levers Brothers, so help you God."

Hearing Officer: This is a hearing in which there are so many witnesses and interested parties that Mr. Dew, the ~~Investigator in Charge~~, thought his office would be too small and has arranged for us to repair to the old Federal Court room in the Post Office Building, so we will go over there and resume the hearing.

3 (Hearing resumed in old Court Room of Post Office Building.)

Hearing Officer: This is a hearing under the regulations prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the United States Treasury providing the procedure to be followed in the granting, amending, suspending, revoking and *annuling* of Permits under and by virtue of the authority granted by the Provisions of the Federal Alcohol Administration Act as amended.

This hearing is for the purpose of taking testimony and receiving evidence upon which to make Findings of Fact in the Matter of the Annulment of Wholesale Basic Permit No. 13-P-37 which was issued December 26, 1941 by the District Supervisor, District No. 13, Alcohol Tax Unit, in the name of Levers Brothers (Forest E. Levers and Oran C. Dale d/b/a), 209 East Second Street, Roswell, New Mexico; also in the Matter of the Contemplated Denial of the Application under date of November 29, 1943 of Forest E. Levers, co-partner, Forest E. Levers, Special Administrator

of Levers Brothers, doing business as Levers Brothers, 209 East Second Street, Roswell, New Mexico, for Importer's Basic Permit; and also in the Matter of the Contemplated Denial of the Application under date of November 29, 1943 of Forest E. Levers, Co-partner, Forest E. Levers, Special Administrator of Levers Brothers, doing business as Levers Brothers, 209 East Second Street, Roswell, New Mexico, for Wholesaler's Basic Permit. The hearing on all three matters is consolidated into one.

4 My authority to act as Hearing Officer is contained in letter addressed to me by the District Supervisor, District No. 13, Alcohol Tax Unit, under date of November 4, 1943, and in letter addressed to me by the District Supervisor of District No. 13, Alcohol Tax Unit, under date of January 1, 1944. These letters are made a part of this record but will not be read at this time. Do you wish to see them, Mr. McNamara?

Mr. McNamara: No objection at all, sir.

Hearing Officer: I would like to say to both parties: We are all here under considerable expense, both to the Government and to individuals. This is a hearing between citizens of the United States and a branch of the United States government. We want to give everybody every latitude that is possible in conformity to the rules and regulations. The question is before us and I would like to call your attention to this: If you think possible at this time, if both parties would stipulate to certain documentary evidence or certified copies of documentary evidence that will be necessary to go into the record, it will greatly expedite matters. Miss Hatch has the documents and if you will take these matters up with Mr. McNamara, Miss Hatch, we will take a recess while you folks are going over these matters.

5 (At this time a short recess was taken.)

Hearing Officer: Mr. James J. McNamara, attorney, of New Mexico, presented a letter dated January 18, 1944 and was permitted by the Hearing Officer to represent Levers Brothers. Said letter is made a part of this record.

The parties hereto have stipulated the following:

"It is hereby stipulated in the above cases that the record shall include the following:

Order to Show Cause—Form 1430A November 4, 1943, with Certificate of Service by Registered Mail No. 255335. (Marked Government Exhibit 1 for identification).

Registry Return Receipt, No. 255335 of the Post Office Department. (Marked Government Exhibit 2 for identification).

Notice of *Postponment* of Hearing to 2:00 P. M., January 19, 1944, under Registry No. 225343. (Marked Government Exhibit 3 for identification).

Registry Return Receipt No. 225343 of the Post Office Department. (Marked Government Exhibit 4 for identification).

Docket No. FA-7, Notice of Contemplated Denial of Permit 13-P-66 re Application for Wholesaler's Basic Permit Form 1632; under Registry No. 255349. (Marked Government Exhibit 5 for identification).

6 Registry Return Receipt No. 255349 of the Post Office Department. (Marked Government Exhibit 6 for identification).

Docket No. FA-8, Notice of Contemplated Denial of Permit 13-1-12 re Application for Importer's Basic Permit Form 1630; under Registry No. 255348. (Marked Government Exhibit 7 for identification).

Registry Return Receipt No. 255348 of the Post Office Department. (Marked Government Exhibit 8 for identification).

Notice to Set Time and Place of Hearing re Docket No. FA-7, under Registry No. 225356. (Marked Government Exhibit 9 for identification).

Registry Return Receipt, No. 225356 of the Post Office Department. (Marked Government Exhibit 10 for identification).

Notice to Set Time and Place of Hearing re Docket No. FA-8, under Registry No. 225357. (Marked Government Exhibit 11 for identification).

Registry Return Receipt No. 225357 of the Post Office

Department. (Marked Government Exhibit 12 for identification).

Letter of January 1, 1944 from Forest E. Levers, concerning the hearing under Docket FA-7. Received under Registry No. 5490. (Marked Government Exhibit 13 for identification).

7 Letter of January 1, 1944 from Forest E. Levers, concerning the hearing under Docket FA-8. Also received under Registry No. 5490. (Marked Government Exhibit 14 for identification).

Notification of January 5, 1944 re Docket Nos. FA-7 and FA-8; Explanation of Grounds for contemplated Denial of Permits 13-P-66 and 13-1-12; Registry No. 225360. (Marked Government Exhibit 15 for identification).

Registry Return Receipt No. 225360 of Post Office Department. (Marked Government Exhibit 16 for identification).

Copies of Forms 1644 re Personal Subpoena to witness; Ernest Bridges, (Marked Government Exhibit 17 for identification), W. P. Clark (Marked Government Exhibit 18 for identification), Mrs. James A. Daily, (Marked Government Exhibit 19 for identification), H. C. Garrison, (Marked Government Exhibit 20 for identification), P. V. Hart, (Marked Government Exhibit 21 for identification), J. Clifton Hearn, (Marked Government Exhibit 22 for identification), Samuel L. Mangham, (Marked Government Exhibit 23 for identification), W. E. McLaughlin, Jr., (Marked Government Exhibit 24 for identification), Dock Clyde Roberts, (Marked Government Exhibit 25 for identification), Wm. J. Wilson, (Marked Government Exhibit 26 for identification), Alfred C. Wright, (Marked Government Exhibit 27 for identification).

8 Copies of Forms 1645 re Subpoena Duces Tecum, served on James Brister (Marked Government Exhibit 28 for identification), and Cosme P. Garcia. (Marked Government Exhibit 29 for identification).

It is also stipulated in the above cases that the record shall include the following:

Verified copy of Wholesaler's Basic Permit Form 1633

13-P-37, issued December 26, 1941. (Marked Government Exhibit 30 for identification).

Verified copy of Form 1632 Application for Wholesaler's Basic Permit executed October 28, 1941. (Marked Government Exhibit 31 for identification).

Verified copy of Affidavit supporting application on Form 1632 that had been executed October 28, 1941. (Marked Government Exhibit 32 for identification).

Verified copy of County Clerk's certificate as a supporting paper for the application on Form 1632 that had been executed October 28, 1941. (Marked Government Exhibit 33 for identification).

Verified copies of Orders under No. 1911 in the Probate Court, Chaves County, State of New Mexico, given October 6, 1941 (Marked Government Exhibit 34 for identification), and October 10, 1941 (Marked Government Exhibit 35 for identification), respectively, by the Honorable Lucius Dills, Probate Judge; also verified copy of Letters of Co-Administration of Partnership Assets in the Probate Court by the Honorable Lucius Dills, October 15, 1941; (Marked Government Exhibit 36 for identification)—these papers supporting the application on Form 1632 executed October 28, 1941.

Verified copy of letter of October 28, 1941 signed by Forest E. Levers. (Marked Government Exhibit 37 for identification).

Verified copy of letter of October 20, 1941 signed by Forest E. Levers. (Marked Government Exhibit 38 for identification).

Verified copy of Permit on Form FA-9 Wholesaler's Basic Permit P-8482 dated March 21, 1936. (Marked Government Exhibit 39 for identification).

Verified copy of Application for Wholesaler's Basic Permit on Form FA-7 executed January 21, 1936 with verified copy supporting statement. (Marked Government Exhibits 40 and 41 for identification).

It is also stipulated in the above cases that the record shall include the following:

Verified copy of Affidavit supporting Application on Form 1632 executed November 29, 1943. (Marked Government Exhibit 41 for identification).

10 Verified copy of Form 1632 Application for Wholesaler's Basic Permit, executed November 29, 1943. (Marked Government Exhibit 42 for identification).

Verified copy of Affidavit supporting Application on Form 1630 that was executed November 29, 1943. (Marked Government Exhibit 43 for identification).

Verified copy of County Clerk's Certificate with attached Order in case No. 1911, filed November 15, 1943 in the Probate Court of Chaves County, State of New Mexico—supporting papers for the Application on Form 1632 that was executed November 29, 1943. (Marked Government Exhibit 44 for identification).

Verified copy of Form 1630, Application for Importer's Basic Permit executed November 29, 1943. (Marked Government Exhibit 45 for identification).

Verified copy of Affidavit supporting Application for Importer's Basic Permit that was executed November 29, 1943. (Marked Government Exhibit 46 for identification).

It is also stipulated in the above cases that the record shall include the following:

Verified copy of Articles of Incorporation of Smoke House, Inc., with principal office in Roswell, New Mexico, filed in Office of State Corporation Commission, State of New Mexico, April 6, 1935. (Marked Government Exhibit 47 for identification).

11 Verified copy of Amendment to Certificate of Incorporation, changing its name to Standard Liquor Stores, Inc., from Smoke House, Inc., filed in Office of State Corporation Commission of New Mexico, January 20, 1936. (Marked Government Exhibit 48 for identification).

Verified copy of Annual Report to the State Corporation Commission of New Mexico, filed for Standard Liquor Stores, Inc.,—year 1941—date of filing, July 19, 1941 with the Clerk of the Commission. No. 6178. (Marked Government Exhibit 49 for identification).

Verified copy of Annual Report to the State Corporation Commission of New Mexico, filed for Standard Liquor Stores, Inc.,—year 1942. No. 6178. (Marked Government Exhibit 50 for identification).

Verified copies of papers relating to dissolution of Standard Liquor Stores, Inc., as follows:

Certificate of filing as Certificate of Dissolution of Standard Liquor Stores, Inc.; No. 20243, Dated October 11, 1943; (Marked Government Exhibit 51 for identification)

Letter to the State Corporation Commission, Santa Fe, New Mexico, received September 27, 1943 from Commissioner of Revenue, State of New Mexico; (Marked Exhibit 51-a for identification)

Letter received September 2, 1943 for the files of the New Mexico State Corporation Commission from the Franchise Tax Department of the State Corporation Commission; (Marked Exhibit 51-b for identification)

12 Letter received October 1, 1943 for the files of the New Mexico State Corporation Commission from the Income Tax Division, Bureau of Revenue, State of New Mexico; (Marked Exhibit 51-c for identification)

Copy of Certificate of Dissolution of Standard Liquor Stores, Inc., dated September 25, 1943; (Marked Exhibit 51-d for identification)

Certificate as to the names and addresses of directors and officers of Standard Liquor Stores, Inc.; (Marked Exhibit 51-e for identification)

Affidavit as to payment of taxes under the laws of the State of New Mexico, executed September 25, 1943; (Marked Exhibit 51-f for identification)

Copy of Resolution, received October 1, 1943 for the files of the State Corporation Commission of the State of New Mexico, showing the Resolution for the sale of the assets of Standard Liquor Stores, Inc., to Oran C. Dale, executed October 26, 1943. (Marked Exhibit 51-g for identification).

It is also stipulated in the above cases that the record shall include the following:

Photostat of a certified copy of the record on file in the office of the County Clerk, Lea County, New Mexico, showing the record covering Lots 6 and 7, Block 4, South Eunice Addition to the Town of Eunice, said copy dated September 22, 1942, and marked Exhibit No. 52.

13 Photostat of a certified copy of the record on file in the office of the County Clerk, Lea County, New Mexico, showing the list of warranty deeds and mortgage deeds of record in said county on Lot 11, Block 35, original Town of Hobbs, New Mexico, from January 1, 1934, to March 4, 1939, said instrument being dated September 1, 1942, and marked Exhibit No. 53.

Photostat of public roster showing the record of Rolland E. Levers for the period, August 31, 1935, to September 25, 1939, and certified as a true and correct copy by Alice M. Gaffey, secretary and executive officer, Colorado State Civil Service Commission, and marked Exhibit 54.

Photostat of public roster showing the record of Rolland E. Levers for the period, July 1, 1941, to June 8, 1943, and certified as a true and correct copy by Alice M. Gaffey, secretary and executive officer, Colorado State Civil Service Commission, and marked Exhibit No. 55.

Hearing Officer: Is the Government ready to proceed?

Miss Hatch: Yes.

Hearing Officer: Is the Respondent ready to proceed?

Mr. McNamara: Yes.

14 MRS. LILLIAN B. KARR, called as a witness by the Government, having been first duly sworn by the Hearing Officer, testified as follows:

Direct Examination by Miss Hatch.

Q. State your name and position.

A. Mrs. Lillian B. Karr, Secretary to the Investigator in Charge, Alcohol Tax Unit, Albuquerque, New Mexico.

Q. Mrs. Karr, I hand you these cards; can you identify them?

A. Yes, those are copies of the original Form 11 which

Mr. Dew, my superior officer, obtained from the Collector's office and asked me to make copies of. The copies were checked with the originals and I know them to be correct.

Q. Will you take them in order and read the names of the taxpayers and the closing date for the fiscal year covered?

A. Standard Liquor Stores, Inc., d/b/a Smoke House, Roswell, New Mexico, June 30, 1942; (Marked Government Exhibit 56 for identification)

Smoke House—Standard Liquor Stores, Inc., Roswell, June 30, 1941; (Marked Government Exhibit 57 for identification)

Clyde Roberts—Green Lantern, Roswell, New Mexico, June 30, 1942; (Marked Government Exhibit 58)

15 Standard Liquor Stores, Inc., d/b/a Green Lantern Bar, Roswell, New Mexico, June 30, 1942; (Marked Exhibit 59)

Standard Liquor Stores, Inc.—Green Lantern, Roswell, June 30, 1941; (Marked Exhibit 60)

The Standard Liquor Stores, Inc., d/b/a The Cantina Bar, Roswell, New Mexico, June 30, 1941; (Marked Exhibit 61)

Standard Liquor Stores, Inc., d/b/a Cantina Bar, Roswell, June 30, 1942; (Marked Exhibit 62):

Standard Liquor Stores, Inc., Heidelberg Inn, Hobbs, New Mexico, June 30, 1941; (Marked Exhibit 63)

Standard Liquor Stores, Inc., d/b/a Heidelberg Inn, June 30, 1942; (Marked Exhibit 64)

Standard Liquor Stores, Inc., Hollywood Club, Hardin Hotel, Hobbs, New Mexico, June 30, 1941; (Marked Exhibit 65)

Standard Liquor Stores, Inc., d/b/a Hollywood Club, Hobbs, New Mexico, June 30, 1942; (Marked Exhibit 66)

James A. Daily—Central Bar, Tucumcari, New Mexico, June 30, 1941; (Marked Exhibit 67)

Central Bar, Tucumcari, New Mexico, June 30, 1942; (Marked Exhibit 68)

Yucca Bar, Carrizozo, New Mexico, June 30, 1942;
(Marked Exhibit 69)

Gladys Loudon—Yucca Cocktal Bar, Carrizozo, New Mexico, June 30, 1941; (Marked Exhibit 70)

16 Miss Hatch: I offer these in evidence for the Government under the numbers assigned to them.

Mr. McNamara: No objection.

Hearing Officer: They are admitted.

Miss Hatch: That is all.

Mr. McNamara: No questions.

(Witness excused.)

JOHN M. SCHOOLEY, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Miss Hatch.

Q. Mr. Schooley, will you state your name and position?

A. John M. Schooley, Special Investigator, Alcohol Tax Unit, Denver, Colorado.

Q. Would you state briefly the work that you did as a summary in connection with the investigation duties assigned to you?

A. In connection with Mr. Black, another special investigator, and investigators Platt and Hill, I made an investigation into alleged violations on the part of Levers Brothers in connection with the violation of Section 5 A, B, C of the Federal Alcohol Administration Act, at the office of the Standard Liquor Stores, Incorporated, which is
17 or was at that time in the Smoke House Bar in Roswell. I secured several letters, sales slips, etc. that were used in a subsequent investigation. These papers were all secured the 7th day of August, 1942.

Q. I hand you this paper; will you identify it?

A. It is a photostat of an original sales slip which I secured from the office of the Standard Liquor Stores, Incorporated, on the 7th day of August, 1942, showing the payment of the rent at the Crystal Bar and Hollywood Bar at Hobbs to Levers Brothers.

(Photostat marked Government Exhibit 71 for identification.)

Miss Hatch: I offer this exhibit in evidence for the Government.

Mr. McNamara: I object to the introduction of this exhibit in evidence for the reason that it is an unsigned memorandum; it is in no way connected with Mr. Forest E. Levers; it was not found in his place of business; it is dated more than three years ago, thus being a transaction outside the Statute of Limitations, and fails to prove or disprove any issue connected with the matter now in hearing.

Hearing Officer: What is the purpose of offering this document, Miss Hatch?

18 Miss Hatch: Mr. Schooley's testimony showed that he was conducting an investigation under instructions from his superior officers and during his investigation he obtained this paper; his testimony has shown where he got the paper; it is related to the charges on the citation.

Hearing Officer: What is the purpose of introducing it? What do you wish to show by it?

Miss Hatch: It shows a connection and control of retail outlets and assistance to them in connection with the payments, and this covers rent.

Hearing Officer: Is this one of the bars which Levers Brothers was supposed to have control of or own at the time they made affidavit in support of the permit for Levers Brothers?

Miss Hatch: Not the firm of Levers Brothers; these retail outlets are supposedly branches of Standard Liquor Stores, Inc. but the testimony will show that the firm of Levers Brothers had a measure of control over these outlets.

Hearing Officer: I will admit it at the present time and if there is a failure to show there is a connection between Levers Brothers and the operation of these stores, you may make a motion to have it stricken, Mr. McNamara.

Q. I hand you this paper; will you identify it?

A. This is a photostat of an original tax receipt issued to Forest E. Levers on November 18, 1936 for payment of

taxes on Lot 11, Block 35, Original Hobbs, in the amount of \$18.61. This was secured on August 7, 1942 at the office of Standard Liquor Stores, Inc. in the Smoke House at Roswell.

19 (Marked Government Exhibit 72 for identification.)

Miss Hatch: This is offered in evidence.

Mr. McNamara: Objected to because it is more than three years old and outside the Statute of Limitations, and because it shows on its face that an addition in a different handwriting from the original has been made in that the words "Palace Bar" have been written on the face of this exhibit.

Hearing Officer: What is the purpose of this? The same as the other?

Miss Hatch: It is the same as the other, and there will be other witnesses who can give further information on it.

Hearing Officer: Admitted, reserving to the respondent the right to move for its rejection.

Q. Will you identify this, Mr. Schooley?

A. This is a photostat of a copy of Agreement entered into between Leland P. King as secretary for the Standard Liquor Stores, Inc. and H. A. Stokes. The contract from which this photostat was secured was obtained from the office of the Standard Liquor Stores, Inc. at the Smoke House in Roswell on August , 1942.

(Marked Government Exhibit 73 for identification.)

20 Miss Hatch: This is offered in evidence for the Government.

Mr. McNamara: Objected to for the reason it is more than three years old.

Hearing Officer: It is admitted and if not connected up with the case you may move to strike it.

Q. I hand you this paper; will you identify it?

A. This is a photostat of a demand note signed by Leland P. King as Secretary and Treasurer of Standard Liquor Stores, Inc. in favor of Levers Brothers for \$1885.43, dated February 23, 1937. The original note from which

this photostat was made was secured by me at the office of Standard Liquor Stores, Inc. at the Smoke House, Roswell, August 7, 1942. (Marked Government Exhibit 74 for identification.)

Miss Hatch: This is offered in evidence as an exhibit for the Government.

Mr. McNamara: Will the Court permit me to make one objection to that and the other two notes, that is, they are dated more than three years from the inception of the hearing matters and show on their face they are in no way connected with Mr. Forest E. Levers.

Hearing Officer: What is the purpose of this; is it further evidence showing control of the properties by Levers Brothers?

Miss Hatch: Yes, it is additional evidence.

21 Hearing Officer: They are admitted under the same provision.

Q. I hand you this paper; will you identify it?

A. This is a photostat, credit memorandum issued to the S. L. S., Inc. dated 8/9/1937, in account with Levers Brothers. It shows a notation of credit to ledger balance of \$1850.00, discount by agreement, \$35.43, making a total of \$1885.43, and bears a notation "Thanks". The credit memorandum from which this photostat was made was secured by me on the 7th day of August, 1942 at the office of the Standard Liquor Stores, Inc. in the Smoke House, Roswell, New Mexico.

Miss Hatch: This memorandum is offered in evidence.

(Marked Government Exhibit 75 for identification.)

Mr. McNamara: Objected to for the reason it is more than three years old and that it is not the best evidence in that Levers Brothers books would be the best evidence of a credit allowance, and for the reason that it has not on its face connected Mr. Forest E. Levers with the matter.

Hearing Officer: It is admitted; if connection is not made in the case, motion can be made for its rejection.

Q. I hand you this paper; will you identify it?

A. This is a photostat of a note signed by J. Clifton Hearn as Vice President and Leland P. King as Secretary and Treasurer for the Standard Liquor Stores, Inc. payable six months after date to the order of the First National Bank of Roswell for the amount of \$10,000.00. The note is dated January 25, 1937 and bears the endorsement "For value received I hereby waive notice of protest and non-payment and guarantee payment of the within note. R. E. Levers". The note from which this photostat was made was secured by me at the office of the Standard Liquor Stores, Inc. in the Smoke House in Roswell, New Mexico, on the 7th day of August, 1942.

(Marked Government Exhibit 76 for identification.)

Miss Hatch: This is offered in evidence for the Government.

Mr. McNamara: Will the Court permit me to make the same objection I made to the other note.

Hearing Officer: Same ruling.

Q. Mr. Schooley, will you identify this paper?

A. This is a photostat of a note due four months after date, signed by J. Clifton Hearn as Vice President and Leland P. King as Secretary and Treasurer for the Standard Liquor Stores, Inc., payable to the First National Bank of Roswell in the amount of \$4500.00, dated January 25, 1937. It carries the endorsement "For value received I hereby waive notice of protest and non-payment and guarantee payment of the within note. R. E. Levers". The note from which this photostat was made was secured by me from the office of the Standard Liquor Stores, Inc. in the Smoke House in Roswell on August 7, 1942.

23 (Marked Government Exhibit 77 for identification.)

Miss Hatch: This paper is offered in evidence for the Government.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Mr. Schooley, will you identify this paper?

A. This is a photostat of a letter dated August 9, 1939 to Mr. Frank Kirk, Clovis. The copy that this photostat

was made from was secured by me from the office of the Standard Liquor Stores, Inc. in the Smoke House at Roswell on the 7th day of August, 1942.

(Marked Government Exhibit 78 for identification.)

Miss Hatch: Mr. Hearer, there will be other testimony that will explain this letter more in detail. We would like to offer it for the Government.

Mr. McNamara: Objected to for the reason that it is more than three years old, it is unsigned, and does not on its face refer to Mr. Forest E. Levers.

Hearing Officer: Admitted.

Q. Mr. Schooley, will you identify this paper?

A. That is a photostat of a letter to the Worth Bar, Hobbs, New Mexico, attention Mrs. Billie Smith, from the Standard Liquor Stores, Inc. This copy is not signed by any one individual. The letter that this photostat was made from was secured on the 7th day of August, 1942 at the office of the Standard Liquor Stores, Inc. in the Smoke House at Roswell.

(Marked Government Exhibit 79 for identification.)

Miss Hatch: There will be other testimony concerning this letter and it is offered now in evidence for the Government.

Hearing Officer: Is this to be connected up with the question of falsifying and making false statements in securing the permits?

Miss Hatch: Yes, it shows the credit arrangements through Levers Brothers for certain retail stores and the purchasing policy of the Standard Liquor Stores, Inc. because of these arrangements.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Will you identify this paper, Mr. Schooley?

A. This is a photostat of a copy of a letter written to Mrs. Smith at the Worth Bar, Hobbs, New Mexico, dated April 14, 1937. The copy from which this photostat was made was secured by me at the office of the Standard Liquor

Stores, Inc. in the Smoke House, Roswell, on the 7th day of August, 1942.

(Marked Government Exhibit 80 for identification.)

25 Miss Hatch: This could be read into the record and it would show the argument we are making, but I offer the letter as the Government's exhibit.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Mr. Schooley, will you identify this paper?

A. This is a photostat of a Memorandum. The memorandum from which this photostat was made was secured by me on the 7th day of August, 1942, at the office of the Standard Liquor Stores, Inc. in the Smoke House, Roswell, New Mexico. The memorandum is typewritten, there is some handwriting below it. It explains the sales policy of the Standard Liquor Stores.

(Marked Government Exhibit 81 for identification.)

Miss Hatch: This is offered in evidence as Government's Exhibit 81.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Mr. Schooley, will you identify this paper?

A. This is a photostat of a copy of a letter written to Elson & Company at Carlsbad, New Mexico, dated April 8, 1938, from the Standard Liquor Stores, Inc. by Auditor; the copy bears no signature. The copy of the letter from which this photostat was made was secured by me on August 7th, 1942 in the office of the Standard Liquor Stores, Inc. in the Smoke House, Roswell, New Mexico.

26 (Marked Government Exhibit 82 for identification.)

Miss Hatch: The letter is offered in evidence as an exhibit for the Government.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Will you identify this paper?

A. This is a photostat of a copy of a letter written by the Standard Liquor Stores, Inc. to Ilfeld & Company, Albuquerque, New Mexico, dated April 8, 1938. It bears no signature, merely the notation "By Auditor". The copy from which this photostat was made was secured by me on August 7, 1942 at the office of the *Stand* Liquor Stores, Inc. in the Smoke House in Roswell.

(Marked Government Exhibit 83 for identification.)

Miss Hatch: This paper is offered in evidence by the Government.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Will you identify this paper, Mr. Schooley?

A. This is a photostat of a copy of a letter written to Mr. Rolland E. Levers, Rocky Ford, Colorado, dated February 28, 1938; the signature on this photostat is not very legible but it is Wilson. I think B. J. The copy from which this photostat was made was secured by me on the 7th day of August, 1942 at the office of the Standard Liquor Stores, Inc. in the Smoke House at Roswell.

27 (Marked Government Exhibit 84 for identification.)

Miss Hatch: The letter is offered in evidence as an exhibit for the Government.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Will you identify this paper?

A. This is a photostat of a copy of a letter written by Standard Liquor Stores, Inc. to National Cash Register Company, Roswell, New Mexico, dated October 24, 1938. The copy from which this photostat was made was secured by me at the office of the Standard Liquor Stores, Inc. in the Smoke House in Roswell on the 7th day of August, 1942.

(Marked Government Exhibit 85 for identification.)

Miss Hatch: This is offered in evidence.

Hearing Officer: The purpose is to connect this up with the charges?

Miss Hatch: It will be; another witness will explain the letter.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Will you identify this paper, Mr. Schooley?

28 A. This is a photostat of a copy of a letter written to Mr. Ernest Bridges at Hobbs, New Mexico, dated November 21, 1939. The copy from which this photostat was made was secured by me from the office of the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on the 7th day of August, 1942. The letter is not signed.

(Marked Government Exhibit 86 for identification.)

Miss Hatch: This is offered for the same purpose as the other exhibits have been offered.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Will you identify this paper?

A. This is a photostat of a letter written to Mr. R. E. L. Harris, Hollywood Club, Hobbs, New Mexico, dated June 20, 1937. The copy from which this photostat was made was secured by me on the 7th day of August, 1942 at the office of the Standard Liquor Stores, Inc. in the Smoke House, Roswell, New Mexico.

(Marked Government Exhibit 87 for identification.)

Miss Hatch: This paper is offered in evidence for the Government. The purpose is the same, showing the control.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Mr. Schooley, will you explain part of your work in 1942 at the places of business in New Mexico of some of these retail stores. Did you carry on any further work as a part of that general assignment to make this investigation?

29 A. I examined the 52B records submitted by every New Mexico wholesale liquor dealer who had a tax

stamp for the period April 1, 1935 to June 30, 1938. These records are prepared by the wholesale liquor dealer and forwarded to the office of the District Supervisor in Denver. They show the disposition of whiskey, distilled spirits, by the wholesaler to retail establishments.

From this examination of the records I prepared a chart showing the purchases of the Tokio Nite Club, Palace or S. L. S. Bar, in Hobbs, New Mexico; Pate's or Standard Bar at Clovis, New Mexico; Crystal Bar at Monument, New Mexico; Worth Bar at Hobbs, New Mexico. These sheets or charts show the purchases by these various bars from Levers Brothers and the other wholesale dealers in New Mexico. It shows for the Tokio Nite Club at Hobbs, New Mexico, a purchase of 284.73 wine gallons from Levers Brothers; 9 gallons from Robert Porter & Sons; and none from any other wholesale liquor dealers in New Mexico.

Mr. McNamara: I object to the reading of these memoranda. They have not been offered in evidence; they have not been submitted to the scrutiny of counsel.

Hearing Officer: Objection sustained.

Q. Mr. Schooley, will you identify this paper?

30 A. This is a photostat of the original chart that I made showing the purchases of the Tokio Nite Club at Hobbs, New Mexico, from the various wholesale liquor dealers in the State of New Mexico. It covers the period of April 1, 1935 to December 31, 1935.

(Marked Government's Exhibit 88 for identification.)

Miss Hatch: This is offered in evidence.

Mr. McNamara: We object because this is not the best evidence and because the evidence attempted to be here introduced is so remote and is outside the Statute of Limitations.

Miss Hatch: Mr. Hearer, I do not think this is outside of the Statute under the charges in the citation, and it is customary for a Government employee to be detailed by his superior to examine papers that are in the office of the District Supervisor. I think it is a proper paper.

Hearing Officer: Do I understand this is a photostat secured by you?

A. That is a photostat of the original chart that I compiled from the 52 B records; that is a photostat of the original chart, the original is here, but that is a photostat showing my figures.

Hearing Officer: You made the record yourself from the reports made to the office of the Alcohol Tax Unit?

31 A: I examined the 52 records for the period I mentioned a while ago of every wholesale liquor dealer in the State of New Mexico.

Hearing Officer: What is the purpose of offering it in evidence?

Miss Hatch: This shows the quantities of distilled spirits sold by Levers Brothers to these particular retail places and also shows smaller quantities during the same period sold by other firms.

Hearing Officer: What bearing will that have on the question of the falsification, etc.?

Miss Hatch: It relates to the control of the purchasing policy of these retail outlets.

Hearing Officer: Do you have other testimony to connect this up?

Miss Hatch: All of the testimony will be related. This is one part of a lot of testimony.

Hearing Officer: I will admit it under the same condition, Mr. McNamara.

Q. Mr. Schooley, this has been offered in evidence. I would like for you to explain more in detail the figures that are there.

A. This shows that the Tokio Nite Club at Hobbs, New Mexico, for the period from April to December inclusive of 1935 purchased a total of 284.73 wine gallons from Levers Brothers, 9 gallons from Robert Porter & Sons and none from any other wholesale liquor dealer in New Mexico; that is gallons of distilled spirits.

32 Q. Will you explain the process by which you got these figures to put on the chart?

A. I examined the 52 records of every wholesaler, and

every time that a sale was recorded to the Tokio Nite Club it was put down in a column under the month the sale was made and the months totaled to make the total for the period of 284.73 gallons.

Hearing Officer: For the benefit of the record, what do you mean by the 52 records?

A. 52 A and B records are the records submitted by wholesalers to the District Supervisor showing both the receiving and disposition of distilled spirits.

Hearing Officer: Are those presented or reported to the Supervisor at regular intervals?

A. They are sent in by the various wholesale liquor dealers to the District Supervisor monthly.

Hearing Officer: Is that report required by the District Supervisor?

A. It is required under the regulations of the Internal Revenue laws.

Hearing Officer: And this is a report sent by the wholesaler who has made the sales to the purchasers, naming the purchasers, to the District Supervisor to show the amount of spirits he handled during that month?

33 A. Yes, the 52 B record is the one that shows the distribution to the liquor establishments by the wholesaler; it is the 52 B this is compiled from.

Miss Hatch: To make the record clear, we merely repeat that this paper was offered in evidence and has been given the exhibit number as Government's Exhibit 88.

Q. (By Miss Hatch) Mr. Schooley, will you identify this paper?

A. This is a photostat of the original chart that I made showing the purchases of the Palace or S. L. S. Bar at Hobbs, New Mexico, from the 52 B records submitted by all of the wholesalers in the State of New Mexico to the District Supervisor in Denver for the period April, 1935 to March, 1938 inclusive, that is, with one exception—it does not show the figures for February, 1937.

(Marked Government Exhibit 89 for identification.)

Miss Hatch: That paper that Mr. Schooley has just identified is offered in evidence for the Government.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Miss Hatch: There will be no further testimony concerning this chart and we wish the data to be read into the record so it will appear more completely than just as an exhibit.

34 A. This chart shows that the Palace or S. L. S. Bar in Hobbs, New Mexico purchased for the months of April to December inclusive, 1935, a total of 841.90 gallons of distilled spirits from Levers Brothers, 107.10 gallons from Robert Porter & Sons, 27 gallons from O. M. Sparks Company and none from any other wholesale liquor dealer in the State of New Mexico.

For the year 1936, 1250.54 gallons from Levers Brothers, 6 gallons from Badger Herring Sales, 7 gallons from Charles Ilfeld Company, and none from any other wholesale liquor dealer in the State of New Mexico.

For the year 1937, 486.28 gallons from Levers Brothers, 84.60 gallons from Badger Herring Sales, 22.49 gallons from Elson & Company, 77.40 gallons from Charles Ilfeld Co., 99.63 gallons from Robert Porter & Sons, and none from any other wholesale liquor dealer in the State of New Mexico.

For the months of January, February and March of 1938 from Levers Brothers 145.71 gallons, from Badger Herring Sales 33 gallons, from Elson & Company 34.20 gallons, from Charles Ilfeld Co. 10.98 gallons, from Robert Porter & Sons 53.96 gallons, and none from any other wholesale liquor dealer in the State of New Mexico. That is all distilled spirits.

35 Q. Will you identify this paper?

A. That is a photostat of a chart that I made from the 52 B records showing the purchases of Pete's or Standard Bar at Clovis, New Mexico, as reflected by the 52 B records as submitted by all of the wholesale liquor dealers in the State of New Mexico to the District Supervisor in Denver. This covers the period June, 1935 through 1937.

(Marked Government Exhibit 90 for identification.)

Miss Hatch: This paper is offered as Government's Exhibit 90.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Will you please read the data from this Exhibit 90 into the record?

A. This shows that Pete's or Standard Bar in Clovis, New Mexico purchased for the months of June to December inclusive, 1935, exclusive of the month of August, 1577.02 gallons of distilled spirits from Levers Brothers and none from any other New Mexico wholesale liquor dealer.

For the year 1936 they purchased from Levers Brothers a total of 1418.44 gallons; 87.33 gallons from Badger Herring Sales; 3 gallons from Charles Ilfeld Co., and none from any other wholesaler in New Mexico.

For the year 1937 they purchased from Levers Brothers 705.14 gallons; 102.50 from Badger Herring Sales; 18.88 from Charles Ilfeld Co. and none from any other wholesale liquor dealer in New Mexico.

36 Q. I hand you this paper; will you identify it?

A. This is a photostat of a chart I made showing the purchases of the Crystal Bar at Monument, New Mexico, as compiled from the 52 B records submitted by all the wholesale liquor dealers in New Mexico to the District Supervisor at Denver, Colorado.

(Marked Government Exhibit 91 for identification.)

Miss Hatch: This paper is offered in evidence for the Government.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. This paper bears Exhibit number 91; I wish the data read into the record.

Hearing Officer: Of course, if the exhibit is stricken out, the record will be stricken out too.

A. This chart shows that for the period May to Decem-

ber inclusive, 1936, the Crystal Bar at Monument purchased from Levers Brothers a total of 485.79 gallons of *distolled* spirits; from Robert Porter & Sons 6 gallons, and none from any other New Mexico wholesaler.

For the year 1937, with the exception of the month of February, purchased from Levers Brothers a total of 303.04 gallons; from Badger Herring Sales Co. 12.38; from Charles Ilfeld Co. 16.72; from Robert Porter & Sons 15.23; and none from any other New Mexico wholesaler.

37 For the first six months of 1938 the Crystal Bar purchased from Levers Brothers 60.33 gallons; Badger Herring Sales 26.25; Chas. Ilfeld Co. 6; Robert Porter & Sons 17.68 and none from any other New Mexico wholesaler.

Q. Mr. Schooley, will you identify this paper?

A. This is a photostat of the original chart I prepared, showing the purchases of the Worth Bar at Hobbs, New Mexico, from the 52 B records submitted by all New Mexico wholesale liquor dealers to the office of the District Supervisor for the period from October, 1935 through June, 1938, with the exception of the figures for February, 1937 which are missing.

(Marked Government Exhibit 92 for identification.)

Miss Hatch: This is offered in evidence for the Government.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. We would like for the data in this to appear in the record.

A. This chart shows that for the months of October, November and December of 1935 the Worth Bar purchased from Levers Brothers a total of 147.25 gallons of distilled spirits and none from any other New Mexico wholesaler.

38 For the year 1936 purchased from Levers Brothers 1013.14 gallons; from Chas. Ilfeld Co. 27.70 gallons, and none from any other New Mexico wholesale liquor dealer.

For the year 1937 purchased from Levers Brothers 609.16

gallons; from Chas. Ilfeld Co. 29.60 gallons, and none from any other New Mexico wholesale liquor dealer.

For the first six months of 1938 purchased from Levers Brothers 236.36 gallons; from Chas. Ilfeld Co. 1.65 gallons, and none from any other New Mexico wholesale liquor dealer.

Miss Hatch: That is all.

Cross Examination by Mr. McNamara.

Q. When did you make this tabulation, Mr. Schooley?

A. The tabulation was made in October; I would have to go to my daily reports.

Q. What year?

A. 1942; the latter part of September or first part of October.

Q. Do you know who owned the Tokio Nite Club; was it the Standard Liquor Stores, Inc.; was it owned by it or was it owned by a fellow named Ed. Hackett?

A. Well, at the time this chart was prepared I think the Tokio Nite Club was supposed to have been owned by the Standard Liquor Stores.

39 Q. Did you see anything in the records that indicated it was or was that information you just gathered or were you so informed?

A. Well, I talked to a number of people—I say a number—several who worked in the Tokio Nite Club at the time it was opened and while it was operating, they were working there, so they said, for Levers Brothers, but the place, as I understood, was in the name of the Standard Liquor Stores.

Q. That was back in 1935?

A. Yes, it only operated a short time, as I understand.

Re-Direct Examination by Miss Hatch.

Q. Is that all the information you have concerning the ownership?

A. I don't recall seeing any papers on it; the only thing I know is what various witnesses that I contacted in the course of my investigation said, they said they were working for Levers Brothers, were hired by one of the members of Levers Brothers Wholesale Liquor Company.

(Witness excused.)

(At this time the hearing was recessed until 9 o'clock the following morning.)

January 20, 1944, 9 A. M.:

40 Hearing Officer: The hearing will come to order, both parties being present. Is the Government ready to proceed?

Mr. Schooley: We are ready.

Hearing Officer: Proceed.

D. W. BLACK, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. Will you state your name and official capacity, if any, with the United States Government.

A. D. W. Black, special investigator, Alcohol Tax Unit, District 13, Denver, Colorado.

Q. Mr. Black, have you at any time in the past two or three years had occasion in connection with your official duties to make an examination and investigation of the activities of the firm of Levers Brothers, wholesale liquor dealers, at Roswell, New Mexico?

A. Yes.

Q. In what connection was that investigation made?

A. With John M. Schooley, special investigator, and investigators Hill and Platt I made an investigation of the activities of Levers Brothers, wholesale liquor dealers, Roswell, New Mexico, as to violations of Section 5 A, B and C of the Federal Alcohol Administration Act.

41 Q. In connection with that investigation, did you secure any papers or documents at Levers Brothers?

A. No, not at Levers Brothers.

Q. Did you secure any papers at any other place bearing on the investigation?

A. Yes, I secured some papers from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, New Mexico.

Q. I show you this photostat; will you see if you can identify it?

A. It is a photostatic copy of a document secured from the Central Bar at Tucumeari, New Mexico.

(Marked Government Exhibit 93 for identification.)

Mr. McNamara: Objected to, if the Court please, as not being the best evidence as it shows on its face it is a photostat of a copy, and for the further reason that it fails to show on its face any connection with the matter now in hearing.

Hearing Officer: What is the purpose, Mr. Schooley?

Mr. Schooley: The Government would like to introduce this in evidence for the reason that the original of this is not available; for the further reason that the purpose of this hearing as shown in the order to show cause to the firm of Levers Brothers, in their application for Basic Permit 13-P-37 and the Basic Permit which preceded that, in answer to several questions, "Question E:

42 State whether applicant or any of its officers, directors, principal stockholders, or any other person holding or expecting to hold a substantial financial interest in the enterprise, holds any interest in any premises on which distilled spirits, wine or malted beverages are sold at retail? If so, give particulars including date such interest was acquired." The answer is: "Do not hold any interest in any retail outlets." In answer to another question on the application for permit: "State whether applicant, either directly or indirectly, has actual or legal control over any other corporation or is actually or legally controlled by any other corporation, whether such control is effected through stock ownership or in any other manner, and if so, state the extent and manner of such control; the name and address of such corporation or corporations, together with the names and addresses of the officers and directors of such corporation." Answer: "Have no connection with any corporation, directly or indirectly". In answer to another question in the application: "State whether applicant or any of its officers, directors, principal stockholders or any other person holding or expecting to hold a substantial financial interest in the enterprise, holds any interest in any premises on which distilled spirits, wine or malt beverages are sold at retail. If so, give particulars, including

date such interest was acquired". Answer: "Do not hold any interest in any retail outlets."

43 The purpose of this exhibit is to show that at the time this application was made, there was a continuing interest by the firm of Levers Brothers in the activities of the Standard Liquor Stores, Inc.

The Government will attempt to show that that interest in the retail outlets existed prior to the issuance of this Permit and prior to the existence of the Permit which preceded it; that it has been a continuing offense since the passage of the Federal Alcohol Administration Act. For that purpose we ask that this Exhibit 93 be accepted in evidence.

Hearing Officer: This is a photostat of a copy secured from their office?

Mr. Schooley: Yes.

Hearing Officer: It will be admitted; objection overruled.

Mr. Schooley: I would like permission to read this into the record?

Hearing Officer: You may.

Mr. Schooley: (Reading Government Exhibit 93.)

44 [Exhibit 93 not printed here since it appears at printed page 295.]

45 Q. Mr. Black, I hand you this photostat, will you identify it?

A. That is a photostatic copy of a document secured by me from the Central Bar at Tucumcari, New Mexico, September 4, 1942.

(Marked Government Exhibit 94 for identification.)

Mr. McNamara: Same objection.

Mr. Schooley: I would like to have it admitted in evidence for the same purpose as stated before.

Hearing Officer: Objection overruled; admitted.

Mr. McNamara: I don't think it is necessary that we read all these into the record and I am going to object to it.

After you introduce them in evidence, they become part of the record.

Mr. Schooley: We will not read any more of these in.

Q. Mr. Black, will you identify this copy?

A. That is a photostatic copy of a document secured by me at the Central Bar, Tucumcari, New Mexico, September 4, 1942.

(Marked Government Exhibit 95 for identification.)

Mr. Schooley: For the same purpose, we ask that this be admitted in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Those that are for this same purpose, I take it the same objection is made to all of them and the same ruling is made.

46 Q. Mr. Black, can you identify this?

A. That is a photostatic copy of a document secured by me from the Central Bar, Tucumcari, New Mexico, September 4, 1942. (Marked Government Exhibit 96 for identification.)

Mr. Schooley: Offer this in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Let's have it understood these documents are all to show this connection and are subject to the same objection and that the same ruling is made.

Q. I hand you this paper; will you identify this?

A. This is a photostatic copy of a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, New Mexico, August 28, 1942.

(Marked Government Exhibit 97 for identification.)

Mr. Schooley: Offer this in evidence.

Mr. McNamara: Same objection.

Mr. Schooley: This is a certificate as to the payment of capital stock of Smoke House, Inc. It is submitted for the same reason, that the Government will attempt to show that the affairs of Levers Brothers and Standard Liquor Stores

are one and the same, and that the activities of the Standard Liquor Stores are included in those Levers Brothers and the parts bearing upon Standard Liquor Stores bear upon the activities of the firm of Levers Brothers.

Hearing Officer: Objection overruled.

47 Q. Mr. Black, here are six sheets, can you identify that document?

A. Yes, these are photostatic copies of documents secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, New Mexico, August 28, 1942.

(Marked Government Exhibit 98 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Object for the same reason, and in addition, that the document is dated in 1935, which is beyond the period of the Statute of Limitations.

Mr. Schooley: This is offered for the reasons stated in connection with the other documents and for the further reason that this is not a criminal proceeding, this is a statutory hearing with respect to the annulment of their basic permit; the Statute of Limitations has no bearing whatsoever upon the evidence offered in this type of hearing.

Hearing Officer: That is true. Objection overruled.

Q. Can you identify this sheet, Mr. Black?

A. Yes, this is a photostatic copy of a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, New Mexico, August 28, 1942.

48 (Marked Government Exhibit 99 for identification.)

Mr. Schooley: Offered for the same reasons as stated before.

Mr. McNamara: Same objection.

Hearing Officer: What does this show?

Mr. Schooley: This is a copy of the minutes of Regular Meeting of the Board of Directors of Smoke House, Inc. and is offered for the same reason as stated before and for the further reason that this document shows that certain

persons were present that the Government will attempt to show later were not present at the time this meeting was held.

Hearing Officer: The objection is overruled; admitted. Now, in order that we may get the slant the hearing *also* has on this, I understand that what the Government desires to show here is that there is and has been a connection between Levers Brothers and the stores known as the Standard Liquor Stores for a period of years and that in securing these permits from the Government, Levers Brothers made false statements as to the connection of the two and their having an interest in it.

Mr. Schooley: That is what we are attempting to show. We are further attempting to show that the affairs of the Standard Liquor Stores were in fact controlled by the firm of Levers Brothers and these papers are in part fictitious.

49 Hearing Officer: I will say now, it might help us along with the hearing, anything of that kind will be admitted.

Q. Mr. Black, can you identify this paper?

A. This is a photostatic copy of a document secured by me from Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, New Mexico, under date of August 28, 1942. (Marked Government Exhibit 100 for identification.)

Mr. Schooley: Offered for the same reasons.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Mr. Black, can you identify this paper?

A. Yes, these are photostatic copies of documents secured by me from Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, New Mexico, under date of August 28, 1942.

(Marked Government Exhibit 101 for identification.)

Mr. Schooley: Offered in evidence.

Hearing Officer: With Mr. McNamara's understanding and consent, it will not be necessary to offer each exhibit

separately or to repeat the objection or the ruling, as it will be understood the same objection is made to all of them and the same ruling is made.

Q. Can you identify this paper?

50 A. Yes, this is a photostatic copy of a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

*(Marked Government Exhibit 102 for identification:)

Q. Mr. Black, can you identify this paper?

A. Yes, this is a photostatic copy of a document secured by me at the office of the Standard Liquor Stores, Inc. in the Smoke House, Roswell, New Mexico, August 28, 1942.

(Marked Government Exhibit 103 for identification.)

Q. I hand you two sheets, Mr. Black, can you identify these?

A. Yes, these are photostatic copies of documents secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

(Marked Government Exhibit 104 for identification.)

Q. Will you identify this paper?

A. This is a photostatic copy of a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

(Marked Government Exhibit 105 for identification.)

Q. Can you identify this paper, Mr. Black?

A. Yes, this is a photostatic copy of a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

(Marked Government Exhibit 106 for identification.)

51 Q. I hand you this paper; can you identify it?

A. Yes, this is a photostatic copy of a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

(Marked Government Exhibit 107 for identification.)

Mr. Schooley: This is offered in evidence for the pur-

poses heretofore stated and for the further reason that there are several actions taken at this Board of Directors meeting mentioned herein that will be tied into the case as other witnesses appear.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Can you identify this paper, Mr. Black?

A. Yes, this is a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

(Marked Government Exhibit 109 for identification.)

Mr. Schooley: This is offered for the reasons stated before and for the further reason that this contains information that other witnesses will testify to.

Mr. McNamara: Objected to for the same reason.

Hearing Officer: Overruled; admitted.

Q. Mr. Black, can you identify this paper?

A. Yes, this is a photostatic copy of a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

52 (Marked Government Exhibit, 110 for identification.)

Mr. Schooley: In regard to Exhibit 109, we ask that it be introduced for the same reason as stated before, and for the further reason that this bears a notation regarding certain real estate; witnesses will testify regarding this real estate and the money derived therefrom later on in the hearing.

Hearing Officer: And it is connected up with the operations of Levers Brothers in the charges?

Mr. Schooley: We will attempt to connect up the operation of this real estate with the activities of Levers Brothers.

Mr. McNamara: Same objection.

Hearing Officer: Admitted.

Mr. Schooley: We now offer Exhibit 110 in evidence.

Mr. McNamara: Objected to for the same reasons.

Hearing Officer: Same ruling.

Q. Mr. Black, can you identify this paper?

A. Yes, this is a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

(Marked Government Exhibit 111 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

53 Mr. Schooley: Exhibit 111 is offered for the same reasons as stated before and for the additional reasons that these minutes show that Oran C. Dale was nominated for vice president and elected vice president by unanimous vote. Oran C. Dale is one of the persons signing the application for basic permit 13-P-37 and this is the minutes of the Board of Directors of the Standard Liquor Stores, Inc.

Hearing Officer: It will be admitted.

Q. I hand you this paper, Mr. Black, can you identify it?

A. Yes, this is a photostatic copy of a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

(Marked Government Exhibit 112 for identification.)

Mr. Schooley: It is offered in evidence for the same reasons and for the further reason that the minutes show that Oran C. Dale was present and held 92 shares of stock in the Standard Liquor Stores, Inc.

Mr. McNamara: Same objection.

Hearing Officer: It is admitted.

Q. Can you identify this paper, Mr. Black?

A. Yes, it is a photostatic copy of a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

Mr. Schooley: It is offered in evidence.

54 (Marked Government Exhibit 113 for identification.)

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Mr. Schooley: It is offered for the same reasons and for the further reason that Oran C. Dale was nominated and elected vice president of the Standard Liquor Stores.

Q. Can you identify this paper, Mr. Black?

A. Yes, this is a photostatic copy of a document secured by me from the Standard Liquor Stores, Inc. at their office in the Smoke House, Roswell, on August 28, 1942.

(Marked Government Exhibit 114 for identification.)

Mr. Schooley: Offered for the same reasons as stated before.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Mr. Black, in connection with your investigation of the activities of the firm of Levers Brothers, did you make any examination of any records in the office of the District Supervisor?

A. I did.

Q. What examination did you make, and of what records?

55 A. I checked the 52 B records of every wholesaler in the State of New Mexico on file in the office of the District Supervisor in Denver, Colorado, as to sales of whiskey made to certain retail establishments within the state of New Mexico.

Q. Did you prepare charts?

A. I did prepare a chart following that examination of the records.

Q. I hand you this paper; can you identify this?

A. Yes, this is a photostatic copy of the original chart prepared by me showing sales of distilled spirits by New Mexico wholesale liquor dealers to the Smoke House, Roswell, New Mexico, from April 5, 1935 to July 1, 1942.

(Marked Government Exhibit 115 for identification.)

Mr. Schooley: It is offered in evidence.

Mr. McNamara: Objected to as not the best evidence and as, in part, being outside the Statute of Limitations.

Mr. Schooley: This is offered for the reasons stated before. With respect to the Statute of Limitations, however, this chart does, even so, come down to the Statute. And for the further reason that this is a copy of the records on file in the District Supervisor's office and therefore it is considered good evidence.

Hearing Officer: Let me get the contention of the Government clear. The purpose here is to show a continuing operation of Levers Brothers from the time they first received a permit from the Government to operate a wholesale liquor house down to the filing of charges?

56 Mr. Schooley: The Government will attempt to show that prior to the passage of the Federal Alcohol Administration Act the Smoke House was owned by Levers Brothers; that after the passage of the Federal Alcohol Administration Act the Standard Liquor Stores, Inc. was formed by Levers Brothers and they assumed control over not only the Smoke House but a number of other retail liquor establishments in New Mexico, the Smoke House being one of those, and this chart shows the control of the purchasing power as reflected by the purchases of the Smoke House from Levers Brothers.

Hearing Officer: Exhibit 115 is admitted.

Q. Mr. Black, would you read the totals there and what they represent?

A. From April 5, 1935 to January 1, 1936 the 52-B records of wholesale liquor dealers in the state of New Mexico show that the Smoke House, Roswell, New Mexico, purchased 1176.31 wine gallons of distilled spirits from Levers Brothers, no distilled spirits whatsoever from any other wholesaler within the state.

For the year 1936 it shows that the Smoke House purchased 3598.78 gallons of distilled spirits from Levers Brothers, 39 gallons from O. M. Sparks Co., 22.50 from Chas. Ilfeld Co. and no distilled spirits from any other wholesaler in New Mexico.

57 1937 shows that the Smoke House purchased 2368.30 gallons from Levers Brothers, 3 gallons from Elson & Co., \$1.05 from Chas. Ilfeld Co. and no distilled spirits from any other wholesaler in the state of New Mexico.

In 1938 it shows that the Smoke House purchased 2144.24 gallons of distilled spirits from Levers Brothers, 12 gallons from Elson & Co., 24 gallons from Chas. Ilfeld Co. and no distilled spirits from any other wholesaler in New Mexico.

For the year 1939 it shows that the Smoke House purchased 1600.18 gallons of distilled spirits from Levers Brothers, 5.25 from Elson & Co., 9.90 from Robert Porter & Sons, and no distilled spirits from any other wholesaler in the state of New Mexico.

For 1940 it shows that the Smoke House purchased 1667.01 gallons of distilled spirits from Levers Brothers, 9.70 from Robert Porter & Sons, and no distilled spirits from any other wholesaler in the state of New Mexico.

For 1941 it shows that the Smoke House purchased 1719.22 gallons of distilled spirits from Levers Brothers, 15.45 from Robert Porter & Sons, and no distilled spirits from any other wholesaler in the state of New Mexico.

For the first six months of 1942 it shows the Smoke House purchased 1632.28 gallons of distilled spirits from Levers Brothers and no distilled spirits from any other wholesaler in New Mexico.

58 Q. Can you identify this, Mr. Black?

A. Yes, this is a photostatic copy of a chart prepared by me from the 52 B records of New Mexico wholesale liquor dealers on file in the office of the District Supervisor, Alcohol Tax Unit, Denver, Colorado, from April 5, 1935 to July 1, 1942.

(Marked Government Exhibit 116 for identification.)

Hearing Officer: Is this another of the stores?

Mr. Schooley: This is a record of the Green Lantern, and we will attempt to show the Green Lantern is in the

same category as the Shoke House was at the time part of this chart was prepared.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Mr. Black, this chart shows the purchases of the Green Lantern from April, 1935 through June, 1942. Do you know whether or not during all this period the Green Lantern was shown in the name of the Standard Liquor Stores, Inc.?

A. The Green Lantern was sold in December of 1941.

Q. Then your chart for 1942 will reflect the purchases after the store was sold by the Standard Liquor Stores, Inc.?

A. To a private individual, yes.

Q. From April 5, 1935 to the end of that year the
59 Green Lantern purchased from Levers Brothers 633.62 wine gallons of distilled spirits from Levers Brothers and no distilled spirits from any other wholesale liquor dealer in the State of New Mexico.

For 1936 the Green Lantern purchased from Levers Brothers 1841.85 gallons of distilled spirits, and no distilled spirits from any other wholesaler in New Mexico.

For 1937 the Green Lantern purchased from Levers Brothers 1467.67 gallons of distilled spirits, 3.90 gallons from Chas. Ilfeld Co., 9 gallons from Robert Porter & Sons, and no distilled spirits from any other wholesaler within the State of New Mexico.

In 1938 the Green Lantern purchased from Levers Brothers 1018.31 gallons of distilled spirits and no distilled spirits from any other wholesaler in the state of New Mexico.

In 1939 the Green Lantern purchased from Levers Brothers 980.74 gallons of distilled spirits, 9.53 gallons from Robert Porter & Sons and no distilled spirits from any other wholesaler within the State of New Mexico.

In 1940 the Green Lantern purchased from Levers Brothers 855.60 gallons of distilled spirits, from Robert Porter & Sons 2.10 gallons, and no distilled spirits from any other wholesaler in the state of New Mexico.

60 For the first 11 months of 1941 the Green Lantern purchased from Levers Brothers 662.12 gallons of distilled spirits, 5.12 from Chas. Ilfeld Co., 6.30 from Robert Porter & Sons, and no distilled spirits from any other New Mexico wholesale liquor dealer.

Q. Now, Mr. Black, read the last one after the change of ownership.

A. For the first six months of 1942 under a different ownership, the Green Lantern purchased 131.55 gallons of distilled spirits from Levers Brothers, 12 gallons from Anchor Liquor Co., 307.46 gallons from Chas. Ilfeld Co., 139.30 gallons from Robert Porter & Sons.

Q. Can you identify this paper, Mr. Black?

A. This is a photostatic copy of a chart prepared by me from the 52 B records on file with the District Supervisor of the Alcohol Tax unit, Denver, Colorado, showing purchases of distilled spirits from New Mexico wholesale liquor dealers by the Heidelberg Inn, Hobbs, New Mexico from June 1, 1938 to July 1, 1942.

(Marked Government Exhibit 117 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Mr. Black, will you read these totals, please, showing the purchases?

61 A. For the last six months of 1938 the Heidelberg Inn purchased 523.25 gallons of distilled spirits from Levers Brothers, 9.60 gallons of distilled spirits from Elson & Co., 13.30 gallons of distilled spirits from Chas. Ilfeld Co., 7.60 gallons of distilled spirits from Robert Porter & Sons, and no distilled spirits from any other wholesale liquor dealer of New Mexico.

For the year 1939 the Heidelberg Inn purchased 524.67 gallons of distilled spirits from Levers Brothers, 1.50 gallons from Badger Herring Sales Co., 3 gallons from Elson & Co., 35.70 gallons from Chas. Ilfeld Co., 31.05 gallons from Robert Porter & Sons, and no distilled spirits from any other wholesale liquor dealer of New Mexico.

For the year 1940 the Heidelberg Inn purchased from Levers Brothers 517.60 gallons of distilled spirits, from Chas. Ilfeld Co. 5.90 gallons, from Robert Porter & Sons 21.90 gallons and no distilled spirits from any other wholesale liquor dealer in the state of New Mexico.

For the year 1941 the Heidelberg Inn purchased 457.72 gallons of distilled spirits from Levers Brothers, 2.40 gallons from Anchor Liquor Co., 4.65 gallons from Chas. Ilfeld Co., 5.33 gallons from Robert Porter & Sons, and no distilled spirits from any other wholesalers in the state of New Mexico.

For the first six months of 1942 the Heidelberg Inn purchased 187.02 gallons of distilled spirits from Levers Brothers, 6.15 gallons from Chas. Ilfeld Co., 1.80 gallons from Robert Porter & Sons, and no distilled spirits from any other wholesaler in the state of New Mexico.

Q. Mr. Black, can you identify this chart?

A. Yes, this is a photostatic copy of a chart prepared by me from the 52 B records submitted by wholesale liquor dealers of the state of New Mexico on file in the office of the District Supervisor, Alcohol Tax Unit, Denver, Colorado, showing purchases of distilled spirits by the Standard Bar, Clovis, New Mexico, from January 1, 1938 to July 1, 1942.

(Marked Government Exhibit 118 for identification.)

Mr. Schooley: Offered in evidence for the same reason.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Mr. Schooley: Mr. Hearing Officer, I don't think it is necessary to read all these into the record, we have several more of them. I will just ask Mr. Black questions regarding them.

Hearing Officer: If the photostatic copy goes into the record there is no need of reading the figures.

Q. This chart you prepared, Mr. Black, for the Standard Bar, does that show substantially the same purchases from Levers Brothers as from other wholesale liquor dealers in New Mexico or is it uneven purchases?

63 Hearing Officer: I don't think that is necessary, Mr. Schooley, if it is going in as an exhibit, unless you want it read into the record.

Mr. Schooley: I don't think it is necessary any more.

Q. Mr. Black, can you identify this chart?

A. Yes, this is a photostatic copy of a chart prepared by me from the 52 B records as submitted by New Mexico wholesale liquor dealers on file in the office of the District Supervisor, Alcohol Tax Unit, Denver, Colorado, showing purchases of distilled spirits of the Collins Bar, Roswell, New Mexico from January 1, 1937 to January 1, 1942.

(Marked Government Exhibit 119 for identification.)

Mr. Schooley: We offer this in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Can you identify this paper, Mr. Black?

A. Yes, this is a photostatic copy of a chart prepared by me from the 52 B records submitted by wholesale liquor dealers of the state of New Mexico on file in the office of the District Supervisor, Alcohol Tax Unit, Denver, Colorado, showing purchases of distilled spirits by the Cantina Bar, Roswell, New Mexico, from August 1, 1940 to and including June 30, 1942.

(Marked Government Exhibit 120 for identification.)

Mr. Schooley: Offered in evidence.

64 Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Can you identify this, Mr. Black?

A. Yes, this is a photostatic copy of a chart prepared by me from the 52 B records submitted by wholesalers of the State of New Mexico showing purchases of distilled spirits by the Yucca Bar, Carrizozo, New Mexico for the months of June, July, August, September, October and November, 1941.

(Marked Government Exhibit 121 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Can you identify this chart, Mr. Black?

A. Yes, this is a photostatic copy of a chart prepared by me from the 52 B records submitted by wholesale liquor dealers of the State of New Mexico on file in the office of the District Supervisor, Alcohol Tax Unit, Denver, Colorado, showing purchases of distilled spirits by the Central Bar, Tucumcari, New Mexico, for December of 1941 and the first six months of 1942.

(Marked Government Exhibit 122 for identification.)

Mr. Schooley: Offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

65 Q. Can you identify these two charts, Mr. Black?

A. Yes, these are photostatic copies of charts prepared by me from the 52 B records submitted by wholesale liquor dealers of the State of New Mexico on file in the office of the District Supervisor, Alcohol Tax Unit, Denver, Colorado, showing purchases of distilled spirits from the various wholesalers by the Hollywood Club, Hobbs, New Mexico from August, 1935 to July, 1942, with the exception of February, 1937, which were not available.

Mr. Schooley: Offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

(Above exhibit marked Government Exhibit 123 for identification.)

Q. Mr. Black, can you identify this chart?

A. Yes, this is a photostatic copy of a chart prepared by me from the 52 B records submitted by wholesale liquor dealers of the State of New Mexico on file in the office of the District Supervisor, Alcohol Tax Unit, Denver, Colorado, showing purchases of distilled spirits by the City Bar or

Dexter Bar, Dexter, New Mexico for the first six months of 1942.

(Marked Government Exhibit 124 for identification.)

Mr. Schooley: Offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer. Same ruling.

66 Q. Mr. Black, have you at any time had occasion to make an inspection or examination of the premises known as the Dexter Bar at Dexter, New Mexico?

A. Yes.

Q. What did you find there regarding the ownership of the Bar?

A. I was in the Dexter Bar at Dexter, New Mexico under date of June 29, 1942 and talked to Joe Morris as to previous happenings and the ownership of the Dexter Bar of that date. I also examined the stamps posted in the premises.

Q. You say the stamps; you mean the retail liquor dealer's stamp tax?

A. Yes.

Q. What did that show regarding the ownership?

A. The old stamp was in the name of E. M. Gregory and the latest stamp was in the name of Standard Liquor Stores, Inc.

Cross Examination by Mr. McNamara.

Q. Mr. Black, when did you make these charts?

A. In September of 1942.

Q. How often are the 52 B reports made by wholesale liquor dealers?

A. They are made daily by wholesale liquor dealers and submitted monthly to the District Supervisor.

67 (At this time a 15 minute recess was taken.)

Hearing Officer: The Government will proceed.

ERNEST BRIDGES, called as a witness by the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. Will you state your name, please.

A. Ernest Bridges.

Q. Your place of residence?

A. 615 South McKinley, Hobbs, New Mexico.

Q. Mr. Bridges, at any time in the past few years have you ever managed or worked in any night clubs in the state of New Mexico?

A. I worked at the Hollywood Bar at the Hardin Hotel, Hobbs, New Mexico.

Q. Is that the place known as the Hollywood Club?

A. Yes.

Q. In the Hardin Hotel in Hobbs?

A. Yes.

Q. What year was that in?

A. From October 31, 1938 to March 29, 1941.

Q. Will you just relate in your own words the circumstances under which you became employed in that place?

A. Mr. Ray Levers came by Carlsbad and picked up my father-in-law who is Dee Lightfoot. They went over to Hobbs and looked this place over; in turn they drove to Roswell and completed the transaction over there for this operation of this place.

Q. Were you hired by Mr. Ray Levers or Mr. Lightfoot then?

A. I was hired by Dee Lightfoot.

Q. What were your duties?

A. Bar tender.

Q. In connection with your duties as bar tender did you have anything to do with the purchasing of supplies for the Hollywood Club?

A. O, yes.

Q. What were your duties, just what did you do in connection with the purchase of supplies for the Hollywood Club?

A. I bought what merchandise we needed.

Q. From whom did you make your purchases?

A. From a truck driver for Levers Brothers.

Q. Did you make purchases from any other wholesale liquor dealers on New Mexico?

A. Yes, I did.

Q. What percentage do you recall of your total purchases were made from Levers Brothers, about what were the proportions?

A. The greater part was made, of course, from Levers Brothers; just the percentage I couldn't say.

Q. You handled a number of different brands of whiskey?

A. Yes.

Q. What were the main brands that you handled?

A. I tried to handle some of—the main brands I handled, of course, were the brands handled by Levers Brothers, but we handled some liquors from Robert Porter such as the best known—Old Taylor and Old Grandad.

Q. Were you ever instructed at any time by any member of the Levers Brothers with respect to the purchase of liquors, and from whom you could purchase them, either liquor, wine or beer?

A. Well, on different occasions the auditor for Standard Liquor Stores would tell me to purchase the bulk—of course, in making out the statement they would show the amount purchased from Levers Brothers and the amount purchased from others, and he told me that I was buying too much merchandise from others.

Q. All the time that you were in the Hollywood Club were you employed by Dee Lightfoot or was it under your management at any time? Was Dee Lightfoot connected all the time you were there?

A. No, he was only in there almost five months. I continued on and Ray Levers told me it suited them perfectly for me to work on, that he knew that I had been practically managing the place all the while anyway.

Q. In whose name was the Federal retail liquor dealer's tax stamp?

A. Standard Liquor Stores, Inc.

Q. Have you ever at any time received any orders from Roland E. Levers?

A. No.

Q. Or from J. Clifton Hearn?

A. No.

Q. Or from Leland P. King?

A. No.

Q. In view of your employment there and your associa-

tion with the auditor for Levers Brothers and one of the members of the firm, Ray Levers, who did you consider you were employed by and working for?

A. Levers Brothers.

Mr. McNamara: I object to that and move to have it stricken out as it calls for an opinion of the witness instead of the facts.

Hearing Officer: Objection sustained.

Q. During your employment at the Hollywood Club, Mr. Bridges, all your orders were received either from a member of the firm of Levers Brothers or from the auditor, is that true?

71 A. Yes.

Q. You never received any orders from the three men I just mentioned, Hearn, King or Roland E. Levers?

A. No.

Q. Do you know these men?

A. I am acquainted with Leland King; I just met this gentleman up here.

Q. Mr. Bridges, I show you photostat of a letter marked Exhibit 86 dated November 21, 1939, to Mr. Ernest Bridges, Hobbs, New Mexico, and ask you if you have ever seen the original of that before or a letter similar to that?

A. Yes, I remember that now.

Q. You did receive this letter?

A. Yes.

Q. The letter has to do with the buying policy of the Hollywood Club and what instructions, if any, are in there to you concerning the buying policies and from whom you are supposed to purchase the merchandise sold at the Hollywood Club?

A. Well, the instructions were, the way I see it, was the buying policy of the Hollywood Club was to buy mostly from Levers Brothers on account of their brother being the operator of the Standard Liquor Stores, and my instructions were to buy most of the merchandise from them.

72 Q. You say the brother; is that the brother, Roland E., that you have never seen?

A. Yes, that is what it says here: "As you are aware, the Standard Liquor Stores are operated by Roland E. Levers who is a brother of Levers Brothers."

Q. As a matter of fact, during your employment at the Hollywood Club most of the purchases were made from Levers Brothers, and they were made from Levers Brothers because you received instructions from Forest Levers of that firm to that effect?

A. Yes.

Q. Did any member of the firm of Levers Brothers ever object in the place to the sale of any particular product that you were handling?

A. Yes.

Q. Tell under what circumstances and who it was, just the facts, what happened?

A. On one occasion Mr. Ray Levers came in and sat down to a table, after he spoke to me, reading a paper, and it was just an incident where I had the bar lined up with brands of beer that they didn't handle and there wasn't any of their beer on the bar.

Q. "Their beer", whose beer do you mean?

A. Blatz.

Q. Who handled Blatz beer?

A. Levers Brothers. And he left and in a few minutes the auditor was over there.

73 Q. Who was the auditor?

A. Mr. Billy Wilson, he came over and told me they didn't like it because he said he didn't know I was handling Pabst, and Ray didn't like it because I was handling those other beers when it was a Blatz place.

Q. How were you paid your salary, Mr. Bridges?

A. I paid myself.

Q. Did you receive a straight salary?

A. Yes, charged it out each week.

Q. Did you send the money in or how was the money taken in at the Hollywood Club, did you have a bank account or how did you dispose of that money?

A. I paid for merchandise with it.

Q. Who collected whatever profits there were then?

A. I paid on an old account, took some money and paid on an old account that was against the place to Levers Brothers before my going there.

Q. Did you have to make any account or reports to any one showing the purchases from Levers Brothers of distilled spirits or malt beverages or wine?

A. All the reports I made was the form given to me to make reports on and that was a copy given to the auditor.

Q. That showed all the purchases that you made from any person, any wholesaler?

A. Yes, the paid-outs, it showed that.

Cross Examination by Mr. McNamara.

74 Q. Mr. Bridges, you say Mr. Billy Wilson was the auditor you have been talking about?

A. Yes.

Q. He was the auditor for what company?

A. Standard Liquor Stores.

Re-Direct Examination by Mr. Schooley.

Q. Mr. Bridges, do you know whether Mr. Billy Wilson had any connection at all with the firm of Levers Brothers at that time?

Mr. McNamara: I object to that as calling for his opinion; I have no objection to his stating any facts he knows.

Hearing Officer: I understood him to ask if he knew. You may answer the question as asked, if you know.

A. I wouldn't know.

Hearing Officer: Mr. Bridges, this letter is addressed to you?

A. Yes.

Hearing Officer: This is a photostatic copy of the original?

A. Yes.

75 Hearing Officer: By whom was the original signed?

A. That is what I have been thinking about, I don't know, I don't remember who it was signed by.

Hearing Officer: Was it signed by one of the brothers or the auditor of Levers Brothers?

A. It might have been the auditor but I couldn't say who it was signed it.

Hearing Officer: Did you ever have the substance of this letter under discussion with any member of the Levers Brothers?

A. No.

Hearing Officer: Of with the Liquor Company?

A. No, sir.

Hearing Officer: But this is the instructions from Levers Brothers?

A. O, yes, from whoever wrote it.

Hearing Officer: How do you know it came from them? Is there anything to indicate it came from the Liquor Company or the Oevers Brothers?

A. No, it might have been signed by the auditor, I wouldn't say who it was signed it.

Hearing Officer: It was signed by somebody connected with the Standard Liquor Stores?

A. Yes.

Mr. Schooley: In that connection, the Government will later introduce proof as to the circumstances under which the original of that photostat was written.

76 Hearing Officer: If it is connected up, all right.
(Witness excused.)

J. CLIFTON HEARN, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. State your name, please.

A. J. Clifton Hearn.

Q. And your place of residence?

A. Chandler, Arizona.

Q. Mr. Hearn, during his life time were you acquainted with Ray E. Levers?

A. Yes, I was well acquainted with him.

Q. Are you also acquainted with Forest E. Levers?

A. I am, and was.

Q. You are acquainted with Roland E. Levers?

A. Yes.

Q. Are you acquainted with Oran C. Dale?

A. Yes.

Q. And Leland P. King?

A. Yes.

Q. Mr. Hearn, will you just tell what you know about the formation of the company known as the Smoke House, Inc., the Smoke House incorporation being the same company that was later changed to the Standard Liquor Stores, Inc.?

A. At the time of the formation of this corporation I was living in Hagerman, New Mexico, and was employed by the Pecos Valley Alfalfa Mill Company. This company was a corporation which had previously been formed by Ray Levers and Roy Lockhead and operated alfalfa mills. Each of them owned half of the stock in this Pecos Valley Alfalfa Mill. I don't remember exactly when this occurred, I should have a record to show when this Smoke House was incorporated, but I do recall Ray Levers stopped by Hagerman one time and told me that because of some change in the laws Levers Brothers could no longer operate retail outlets or retail liquor stores, that a corporation was being formed to operate the Smoke House which had previously been owned and operated by Levers Brothers. He said that Roland E. Levers, his brother, was the chief stockholder and that it would be necessary to have some one hold qualifying shares in order to meet the requirements as to the number of directors in the corporation. He said he would like to put a few shares of stock in my name and have me act as a director and officer of this new corporation, and in view of the fact that I was then employed indirectly by Mr. Levers and previous to the formation of the Pecos Valley Alfalfa Mill Co. had been employed directly by him in connection with his wholesale hay business for a matter of six or seven years, I did not question his asking me to do this and was very glad to accommodate him.

78 The stock, I was told was issued in my name, although I never saw the stock, I was informed by Ray Levers that I was the owner of a few shares of stock and had been made a director and vice president of the corporation.

Q. Did you, at any time, Mr. Hearn, ever attend to the best of your knowledge and recollection, a meeting of the Board of Directors of the Standard Liquor Stores, Inc. or the Smoke House, Inc.?

A. I am quite sure I never did.

Q. Did you ever sign any official papers of meetings of stockholders or meetings of Board of Directors?

A. I may possibly have done so; I have a vague recollection of having signed at least one set of minutes or maybe more than one set of minutes.

Q. If you didn't attend the meetings, how did you get the papers to sign?

A. They may either have been mailed to me at Chandler because shortly after the formation of the Smoke House I moved from Hagerman to Chandler, Arizona, or in case it was before I left New Mexico I probably signed them in Roswell, but I don't definitely recall the occasion of any signature on such papers.

79 Q. Have you ever discussed the formation of either the Smoke House, Inc. or the Standard Liquor Stores, Inc. or the operation of any of the retail outlets in the name of the Standard *Liquor* Stores with Forest E. Levers?

A. Have I ever discussed the operation of the business with him?

Q. Yes.

A. No.

Q. Have you ever had any discussion with either Mr. Billy Wilson or Mr. Lile regarding the operation of the Standard Liquor Stores, Inc. retail stores?

A. No, I haven't.

Q. Then all you have ever done in connection with the Standard Liquor Stores, Inc. is to own some stock that you didn't pay for which was put in your name, and perhaps sign minutes of a meeting; you have never taken any active interest in the corporation whatsoever?

A. None at all. I also, however, signed some notes for the corporation. I remember on several occasions after I was out in Arizona receiving some notes from Ray Levers in the mail with the request that I sign them on behalf of the Standard Liquor Stores. As I remember it, these notes were all payable to the First National Bank of Roswell and

were made in connection with the financing of the Standard Liquor Stores.

80 Q. Was there any other statement or advice in connection with the signing of these notes that might help you to be more agreeable to signing them?

A. None, other than the fact there was no personal liability in signing as an officer of the corporation for the payment of the note.

Q. Did you know anything about whether anybody would guarantee the payment of that note if the Standard Liquor Stores, Inc. wouldn't pay it?

A. Not that I know of.

Q. Mr. Hearn, I will show you Government Exhibit 98 which is a photostat of the papers covering the organization of the Smoke House, Inc. and ask you if those papers cover the transactions that you have just testified regarding the formation of this corporation?

A. They appear to do so; this is my signature.

Q. You signed these papers?

A. I did.

Q. Do you own at this time or do you know whether you own the four shares of stock that are shown here in your name?

A. I don't know whether I own them or not.

Q. Mr. Hearn, I will show you Exhibit 99, a photostat of a copy of the minutes of the Board of Directors of the Smoke House, and ask you if the statement made
81 therein to the best of your knowledge and recollection is true?

A. Well, I wasn't present at any such meeting and didn't preside.

Q. Mr. Hearn, I will show you Government Exhibit number 100 which is a photostat of the minutes of the regular meeting of the Board of Directors of the Smoke House July 9, 1935, and ask you if the statement made therein is true?

A. I wasn't present at that meeting.

Q. I will show you Government Exhibit 101, a photostat of the minutes of a stockholders meeting held in September, 1935, and ask you if the information, at least part of the information in there is correct?

A. The information regarding the change of name of the Smoke House to the Standard Liquor Stores evidently was

correct, since that change was made, but as to the meeting itself I couldn't say because I wasn't present.

Q. The statement: "The following stockholders were present in person or by proxy"—

A. I wasn't there in person but it is possible I at one time signed a standing proxy.

Q. The minutes don't show you were there by proxy?

A. As to that I couldn't say but I do know I was not there present.

Q. I show you Government Exhibit number 103, a
82 - photostat of the minutes of a regular meeting of the Board of Directors of the Standard Liquor Stores October 9, 1935, and ask you if that is correct?

A. It is not correct because I wasn't there.

Q. I show you Government Exhibit number 104, Mr. Hearn, a photostat of the minutes of a Directors' special meeting of October 11, 1935, of the Smoke House, Inc. and ask you if the statement regarding your presence there is correct?

A. To the best of my recollection it is wrong because I don't remember having attended this or any other meeting.

Q. I will hand you Government Exhibit 105, Mr. Hearn, a photostat of the minutes of a special meeting of the Board of Directors of the Standard Liquor Stores for February 9, 1936, and ask you if you were present as shown therein at that time?

A. I was not present.

Q. I will show you Exhibit number 106, a photostat of the minutes of a special meeting of the Board of Directors of the Standard Liquor Stores held on June 9, the date isn't given, and ask you if you were present as shown?

A. I was not present.

Q. Mr. Hearn, on Government Exhibit number 107 it shows that you were present at a regular quarterly meeting of the Board of Directors, were you there on March 9, 1937?

A. I was not present at the meeting although I
83 signed the minutes. That is my signature.

Q. Do you recall anything about whether or not this particular paper might have been sent to you or do you recall anything except that you were not there?

A. I don't recall the actual signing of it although I recognize my signature on the document. On March 9, 1937 I

was still living in New Mexico so in all probability I signed it either in Roswell or Hagerman.

Q. Mr. Hearn, I show you Government Exhibit number 110 and ask you if the statement shown there wherein you are shown as being present at a Board of Directors meeting is correct?

A. That is incorrect because I wasn't present at the meeting.

Q. Do you know anything at all about the operation of the Standard Liquor Stores; of your own knowledge, do you know anything about the operation?

A. To my own knowledge I know only that it operates the Smoke House in Roswell.

Q. Have you ever derived any profits from the ownership of the four shares of stock shown on these minutes?

A. None whatever.

Q. Have you ever had to pay anything into the corporation?

A. Nothing at all.

84 Q. And you have never taken any active part or any part whatsoever in any of the affairs of the company except perhaps to sign a paper or two?

A. That is all.

Mr. McNamara: No questions.

(Witness excused.)

W. E. McLAUGHLIN, JR., called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. Will you state your name, please.

A. W. E. McLaughlin, Jr.

Q. What is your place of residence, Mr. McLaughlin?

A. El Paso, Texas.

Q. Have you ever lived in Roswell, New Mexico?

A. Yes.

Q. At what time did you live there?

A. I went to Roswell in May, 1935 or in 1936, I don't remember which.

Q. Would you describe the circumstances under which you went to Roswell in May of 1935?

A. My father was living at that time, he was with the Blatz Brewing Company of Milwaukee. Mevers Brothers of Roswell were his distributors. I met Forest Levers in El Paso; he told me his brother Ray wanted me to go to Hobbs, New Mexico to the Hollywood Bar at the Hardin Hotel. My father didn't want me to go to Hobbs with him, and later I went to Roswell in the Green Lantern Bar, succeeding a man named Sam Newsom.

Q. When you went to work in the Green Lantern what was your position?

A. As manager of the Green Lantern.

Q. As manager of the Green Lantern, what were your duties?

A. I was to tend bar one shift in the night and take care of the buying and hiring of help.

Q. In connection with taking care of the buying, did you receive any instructions from any one regarding where your purchases of the various spirits, wines and beer that you sold there were to be made?

A. Yes, Mr. Ray Levers instructed me that I should buy all my merchandise from them, from Levers Brothers, that if I needed anything else, if I had to have it, to see them before I bought anything else.

Q. That was in May of 1935. After May of 1935 when you were working there did you at any time ever attend any meeting where any member of Levers Brothers was present regarding the formation of any corporation or any other company?

A. No, when I went to the Green Lantern Bar the license was in the name of Sam Newsom and when the new license came due the first of July Ray Levers and Mr. Lile, the bookkeeper, and Leland King, we had a little conference, they told me they were changing the license into the name of the New Mexico corporation called Standard Liquor Stores, Inc. because of the fact that a wholesaler could not operate a retail outlet.

Q. Who made that statement, do you recall?

A. Mr. Ray Levers.

Q. Was Forest Levers present at that time?

A. I think Forest was in the office, I am not sure.

Q. *While* you were working there, did you take any orders from Forest Levers?

A. Forest used to tell me to push certain brands of whiskey and things like that.

Q. Do you know of your own knowledge who the incorporators of the Standard Liquor Stores or the Smoke House, as it was first called, were?

Mr. McNamara: I object to that; the record here shows the original papers and that is the best evidence of who the incorporators were.

Hearing Officer: Objection sustained.

Q. You were manager of the Green Lantern at the time that the tax stamp was in the name of Sam Newsom
87 and after a new tax stamp had been procured in the name of the Standard Liquor Stores, Inc.?

A. Yes, the first license came due two months after I was in and was in the name of the Standard Liquor Stores.

Q. Did the change in the name of the owner on the tax stamp cause any change in your buying policies?

A. No, sir.

Q. You continued then after the tax stamp was in the name of Standard Liquor Stores to make practically all of your purchases from Levers Brothers?

A. Yes.

Q. Did you ever receive any orders from any other person other than Forest Levers or Ray Levers in connection with your management of the Green Lantern?

A. Yes, I did.

Q. From whom?

A. I received orders from Mr. Lile.

Q. Do you know what Mr. Lile's capacity, if any, was?

A. He used to come by and take inventory and I would pay him my money for my whiskey.

Q. Do you know who Mr. Lile's employer was?

A. At that time he was bookkeeper for Levers Brothers.

Q. Did you take any orders from any one else?

A. Mr. Wilson.

Q. Mr. Wilson, known as Billy Wilson?

A. Yes.

88 Q. Do you know who his employer was at that time?

A. He was employed by Levers Brothers and Standard Liquor Stores.

Q. Did you ever sign any lease on any building in Hobbs, New Mexico?

A. Yes, I signed a lease on the Hollywood Bar in the Hardin Hotel in Hobbs, New Mexico.

Q. Is that the same as the Hollywood Club?

A. Yes.

Q. What were the circumstances under which you signed that lease?

A. Ray Levers called me down to the office and said he had some papers for me to sign and he wanted to put the lease in my name because the person it was in he had had some trouble with, so I signed the lease on the building.

Q. Do you recall about how long after you started working in the Green Lantern this was?

A. I think it was the following year.

Q. About 1936 then?

A. Yes.

Q. Mr. McLaughlin, while you were working in the Green Lantern, did you at any time receive any orders from Leland P. King?

89 A. Yes, Leland King would come down and bring me orders that he was supposed to deliver to me some times.

Q. Did you ever receive any orders from J. Clifton Hearn?

A. No sir, I didn't know him.

Q. Did you ever receive any orders from Roland E. Levers?

A. No, sir.

Q. Do you know, Mr. McLaughlin, of your own knowledge from whom Leland P. King was supposed to have received the orders he transmitted to you?

A. From Levers Brothers.

Mr. McNamara: I move that be stricken out because it is clearly hearsay.

Hearing Officer: Do you know of your own knowledge?

A. These orders Mr. King told me that was where they came from?

Q. Do you know of your own knowledge where he received them?

A. No, but I imagine that is where he would receive them.

Hearing Officer: Motion sustained; it will be stricken.

Cross Examination by Mr. McNamara.

Q. Mr. McLaughlin, how long did you work for the Green Lantern?

90 A. About two years.

Q. You would have left there some time in 1937?

A. I think I didn't start until 1936, I am not sure.

Q. The latest would be from 1935 to 1937 or 1936 to 1938?

A. Yes.

Mr. McNamara: If the Court please, I am going to move to strike from the record Mr. McNamara's testimony regarding his employment at the Green Lantern and the occurrences that happened while he was managing the place for the reason that all of these things transpired before the year 1938 and accordingly happened more than three years before and are outside the Statute of Limitations.

Hearing Officer: This, Mr. McNamara, not being a legal hearing and the Statute of Limitations not running, the purpose of the Government having been stated that their intention was to show or to attempt to show a continuous operation under the firm of Levers Brothers from the time they made their first application for permit up to the operation until after the death of the partner, Ray E. Levers, and then the application of the administrator on to the present time, to tie a continuous ownership or control of certain retail outlets, which the Government's contention as

91 I understand is a falsification in a material matter of the application for permit to the Government. The motion is overruled.

Q. Mr. McLaughlin, you testified that you got orders at various times from Lile and Mr. King and Mr. Ray Levers and Mr. Wilson. Of what nature were those orders, what did they tell you to do or not to do?

A. They told me different things that might come up in the way of business.

Q. Did each of them say anything to you about the policy in buying liquors which you should adopt?

A. Yes, they told me that because of the fact that Roland E. Levers, Ray and Forest's brother, was president of the Standard Liquor Company and being their brother they wanted us to handle merchandise from Levers Brothers.

Re-Direct Examination by Mr. Schooley.

Q. Mr. McLaughlin, while you were working at the Green Lantern, who did you consider to be your employer?

A. Levers Brothers.

Re-Cross Examination by Mr. McNamara.

Q. Did you have anything at all to do with the Standard Liquor Stores?

A. Yes, I was supposed to be working for the Standard Liquor Stores after the company was formed, after
92 the name was changed.

Q. You say you were working for Levers Brothers?

A. Yes, I was hired by Ray Levers.

Q. To work for the Standard Liquor Stores?

A. Yes.

Q. The Standard Liquor Stores paid you?

A. I paid myself, it was their money.

Q. You knew the bar was being operated under the name, the Standard Liquor Stores?

A. Yes, later on; at first it wasn't.

Q. And that there was a Federal stamp in there showing the bar was operated by the Standard Liquor Stores?

A. Yes.

Q. And you want to tell the Hearing Officer you knew that stamp was falsely obtained and that the bar was being operated by Levers Brothers while under your management?

A. No, I didn't say that.

Q. Is that what you want to say?

A. No, I said I was hired by Ray Levers and worked in the Green Lantern for Ray Levers; later on it was changed to Standard Liquor Stores.

Q. After the bar changed ownership, do I understand you to say you didn't regard yourself working for the Standard Liquor Stores?

A. Yes, I was working for the Standard Liquor Stores.

Re-Direct Examination by Mr. Schooley.

Q. Mr. McLaughlin, at the time you went to work at the Green Lantern, who did you go to work for?

A. For Ray Levers.

Q. Do you know who owned the Green Lantern at the time you went to work there?

A. Ray Levers owned it but the license was in Sam Newson's name.

Q. After the formation of the Standard Liquor Stores and after the time that the tax stamp was taken out in the name of the Standard Liquor Stores you said a minute ago that you still considered yourself as employed by Levers Brothers?

A. Yes, the Standard Liquor Stores—Ray Levers operated both of them to my knowledge; I still took orders, the two years I was working there, from Ray Levers.

Q. You never took orders from the president or vice president?

A. I received orders from the bookkeeper and from Leland King also.

Hearing Officer: Did I understand you in the beginning to say that you had never had any conversation of hireage after the change of the name except with Ray E. Levers?

A. I don't quite understand.

94 Hearing Officer: After the name of the bar was changed, did you have any conversation concerning your employment with any one except Ray Levers?

A. Yes, I did with the bookkeeper and with Leland King.

Hearing Officer. There was no change in any operation?

A. No, sir.

Hearing Officer: Or any orders as to purchase?

A. No, sir.

Hearing Officer: Or reasons as to purchase other than before?

A. No, sir, we purchased the same way.

(Witness excused.)

(At this time the hearing was recessed until 1:30 P. M.)

1:30 P. M.

Hearing Officer: The hearing will come to order. The Government may proceed.

Mr. Schooley: At this time, Mr. Hearing Officer, I would like to state that the Government will introduce no testimony or other evidence in connection with the Exhibits numbered 88 and 119.

95 Hearing Officer: Those were admitted upon the condition that the Government would present evidence connecting them with the question of fact?

Mr. Schooley: Yes, and no further evidence will be presented by the Government regarding them.

Hearing Officer: That being the case, the two exhibits, numbers 88 and 119, and everything with reference to them will be stricken from the record.

W. P. CLARK, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. State your name, please.

A. W. P. Clark.

Q. And your place of residence?

A. 107 East Lee, Hobbs, New Mexico.

Q. Mr. Clark, in Hobbs you own some real estate?

A. Yes.

Q. Among that, is the premises where the Worth Hotel and Worth Bar, the place formerly known as the Worth Bar, is that among your property?

A. It was before it was burned down.

Q. In the fall of the year 1935 did you own those premises?

A. Yes.

96 Q. Did you lease any part of that property to any member of the firm of Levers Brothers or to the Standard Liquor Stores, Inc.?

A. I can answer that two ways—I did lease it, yes, known as the Worth Bar, adjacent to the lobby of the Worth Hotel.

Q. The part of the premises known as the Worth Bar you leased?

A. Yes.

Q. To whom did you lease that?

A. Forest Levers.

Q. Will you tell in your own words the circumstances under which that lease was made?

A. My attorney drew the lease up as usual and sent it to Roswell to Levers Brothers and they didn't sign that and returned a different lease, known as the Standard Liquor Stores, so I immediately objected to approving that lease until I found who the Standard Liquor Stores was because it was unknown to me.

Q. With whom did you have any conversation prior to the drawing up of these papers by your attorney regarding the lease of the property?

A. Forest Levers only.

Q. Then after the papers were made out, go on from there. You say they were made out to the Standard Liquor Stores; then what happened?

97 A. Before I signed the lease I contacted Mr. Levers and made inquiry as to who the Standard Liquors Stores was, and I don't remember, he related who all they was, he assured me I was still leasing to Levers Brothers, they would stand behind the lease and pay the bills; however, the checks would come through the Standard Liquor Stores.

Q. The property then was leased with that understanding and the name on the lease was the Standard Liquor Stores?

A. Yes.

Q. How long did that lease run?

A. As well as I remember, two years, I think from June 30, 1938 or July 1, I don't know how that lease was worded now, it was the fiscal year of the Federal license, whether

the first of July or when, but they operated on the fiscal year with the license.

Q. You did lease it, and who paid you the rent, do you recall?

A. I don't recall especially, Mr. Levers paid me the first rent, but Billy Wilson paid me the most of it.

Q. Who was he?

A. The auditor for Standard Liquor Stores.

Q. When the lease was made and Mr. Levers said it was still being leased to Levers Brothers, was there
98 any further conversation between you and him at that time regarding why the lease was made in the name of the Standard Liquor Stores?

A. Yes, in all my leases it carries a clause it has to comply with Federal, State and Municipal laws and you haven't the privilege to sublease without written consent, and he said that due to some Federal provision he had to separate his wholesale from the retail.

Q. Under those conditions it was in existence then about two years?

A. As long as I remember, they were in the building some time before that, they had bought out a previous tenant under the unexpired term of his lease.

Q. Who do you mean by "they"?

A. I can't refresh my memory to remember the names of all those different persons.

Q. You say "they" bought out the previous tenant; who do you mean by "they"?

A. The only one I know connected with that was Mr. Levers here, and Mr. Wilson; Mr. Wilson came in as book-keeper some time after the Standard Liquor Stores or Mr. Levers leased the premises but Levers bought out the previous tenant.

Q. At the time the lease was cancelled, who did you deal with then in connection with the cancellation of the
99 lease?

A. I believe the attorney addresses the correspondence to Levers Brothers and the Standard Liquor Stores.

Q. Did you have any personal dealings with any one at that time?

A. Yes, I had some rather unpleasant conversation with Mr. Levers there in regard to it.

Q. Did you ever at any time during the time that the place was leased under the agreement that you have mentioned have any conversation, any dealings at all, with Leland B. King, J. Clifton Hearn or Roland E. Levers?

A. I don't think that I ever met Roland Levers or any of the Levers Brothers except the gentleman here. The only ones I did business with was him and Mr. Wilson, and Mr. Wilson came in as bookkeeper later.

Q. After the place was leased?

A. Yes.

Cross Examination by Mr. McNamara.

Q. Was that lease a written lease?

A. Yes.

Q. It ran from some time in 1935 to 1937?

A. I think the place was leased a year at a time and renewed.

Q. Did it last for two years?

A. As near as I remember, two years, yes.

100 Mr. McNamara: I move to strike out all of Mr. Clark's testimony concerning this lease for the reason it is in writing and that constitutes the best evidence as to the parties to the lease, its terms and conditions, and for the further reason it was made in 1935 and is beyond the Statute of Limitations.

Hearing Officer: Before ruling on that, I would like to ask Mr. Clark: Where you refer in your testimony to Mr. Levers, at each time you have reference to Mr. Forest E. Levers?

A. Yes, the only Levers that I know.

Mr. Schooley: In view of the fact that the Statute of Limitations is not considered in a hearing of this type and in view of the fact that lease is not in the possession of the witness or available to the Government, it is in the possession, if in existence, of the other party to the hearing, Levers Brothers, we ask that Mr. Clark's testimony be admitted.

Hearing Officer: This is a lease on one of the stores that is in question here as connecting up Levers Brothers Wholesale with this line of retail stores?

Mr. Schooley: Yes, the Worth Bar was operated and there was testimony introduced before regarding the purchases of the Worth Bar. There will probably be other
101 testimony by further witnesses regarding this particular place.

Hearing Officer: Objection overruled.

(Witness excused.)

SAMUEL L. MANGHAM, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. Will you state your name, please.

A. Samuel L. Mangham.

Q. Your place of residence?

A. 301 La Mar Street, Fort Worth, Texas.

Q. Mr. Mangham, what business are you in?

A. In the cafe business.

Q. Have you been engaged in that business for any length of time?

A. About thirty-five years, in and out.

Q. In connection with the management of cafes, does that include taverns and bars?

A. Yes.

Q. Have you ever been employed by the firm of Levers Brothers or Standard Liquor Stores?

A. Yes.

Q. When and under what circumstances were you so employed, and by whom?

A. Well, I was hired by Mr. Ray Levers in 1939,
102 to the best of my knowledge around the 1st of August, 1939, I was hired as bar tender and manager of the Cantina Bar.

Q. That is in Roswell?

A. Roswell, New Mexico.

Q. What were your duties?

A. My duties were to run the place, take care of it, keep up the supplies, and do the hiring of help.

Q. In connection with your duties of keeping up the supplies, from whom did you make your purchases?

A. Levers Brothers, Standard Liquor Stores.

Q. Did you make most of your purchases from Levers Brothers or only an ordinary percentage?

A. All.

Q. All of your purchases you made from Levers Brothers?

A. I would work out my "want" list, I was working nights, and the day bar tender would call in for the supplies.

Q. In that connection did you ever receive any instructions from any one regarding from whom these purchases should be made?

A. No, sir.

Q. Why did you make the purchases then from Levers Brothers?

103 A. It was Levers Brothers store and they were supplying it.

Q. How did you know it was Levers Brothers store?

A. Ray Levers.

Q. Because he hired you?

A. Ray Levers gave me all my instructions.

Q. Did you at any time ever receive any instructions from Leland P. King?

A. No, sir.

Q. Or from J. Clifton Hearn?

A. No, sir.

Q. Roland E. Levers?

A. No, sir.

Q. Or W. L. Lile?

A. No, sir.

Q. Or P. J. Wilson?

A. No, sir.

Q. Mr. Mangham, did you ever lose any sales because of the fact that the merchandise you had for sale was not the merchandise that prospective customers wished to purchase?

A. Yes, sir.

Q. In view of the fact that you were managing and acquainted with the business, would it have been possible for you to have returned more net profit to the owners of the Cantina Bar if you could have purchased any brands of liquor, wine or malt beverages you desired?

A. Yes.

104 Mr. McNamara: I object, and move to strike out the answer because it calls for a conclusion of the witness and a speculation as to what he could have done.

Hearing Officer: The question could be asked in a different manner and get the same information. Sustained.

Q. You say you lost sales because you didn't have at least some brands of merchandise that prospective customers wished to purchase?

A. Yes, sir.

Q. Could you have made very many sales if you had had other brands of merchandise?

A. I am sure I could have made a lot of them.

Q. During your employment, did you work at any other place for Standard Liquor Stores or Levers Brothers other than the Cantina Bar?

A. I worked at the Old Heidelberg Inn at Hobbs, New Mexico.

Q. And your duties there were what?

A. The same as in Roswell—bar tender and manager.

Q. Who transferred you there?

A. Ray Levers.

Q. None of the persons I mentioned before—King, Hearn or Roland E. Levers, Lile, or Wilson, gave you any
105 instructions regarding the transfer?

A. No, sir.

Q. What were the buying policies at the Heidelberg Inn at Hobbs?

A. They had a field man, I can't recall his name, that came around and took the order for whatever I needed, the supplies that came out of Roswell.

Q. You say "they" had a field man; who do you mean by "they"?

A. Levers Brothers.

Q. You mean all of your purchases at the Heidelberg were from Levers Brothers?

A. Yes.

Q. Did you at the Heidelberg lose sales or not make sales to prospective customers because of the fact you didn't have the brand of merchandise called for?

A. Yes.

Q. How long were you employed at the Heidelberg, do you recall?

A. Well, I think it was along the 1st of April to the 29th day of June, 1940.

Q. Then you were there about three months?

A. I was there something like three months.

Q. When you went down there you stated a minute ago that purchases were all made from Levers Brothers; why did you do that?

106 A. Well, Ray Levers sent me over there; still his liquor saloon, retail store.

Q. You stated that you have been in this sort of business for about thirty-five years?

A. In and out, yes, sir.

Q. You are well familiar then, are you, with the business and the probable amount of profits of an establishment such as the Heidelberg Inn and Cantina Bar?

A. Well, it wasn't so much at the old Heidelberg Inn.

Q. I mean; you are familiar with that?

A. Yes.

Q. You are now engaged in the same type of business?

A. Cafe business, cafe and grill, bar and cafe, the same kind of business; it isn't what you would call a night club, it is down town.

Q. In your opinion then if you had made purchases on the market of any brands of liquor that you desired, would your volume of business have been increased at both the Cantina and Heidelberg?

Mr. McNamara: Object to that as calling for nothing more than speculation.

Mr. Schooley: I think this man has experience, thirty-five years in a business of this kind, which entitles him to an opinion as to what sort of revenue a business such as he was operating could command.

107 Hearing Officer: Yes, I think 35 years of experience in one line of business would enable him to testify as to whether or not if he had a different class of goods he would have made more profits for his company and for the people for whom he was working. The objection is overruled.

Question repeated.

A. It would have at the Cantina but the old Heidelberg was right down on the rocks; I wouldn't say much about that; but the Cantina could have.

Cross Examination by Mr. McNamara.

Q. Did each one of these stores have a Federal liquor stamp in it, Mr. Mangham?

A. Yes.

Q. In whose name was that Federal liquor stamp issued?

A. Well, as far as I can remember, it was Levers Brothers.

Q. That is your best recollection?

A. Yes.

Q. Levers Brothers wholesale company?

A. Standard Liquor Stores stamps.

Q. They were in the name of Standard Liquor Stores?

A. As far as I know.

Q. Don't you know?

A. No, sir.

Q. You worked in each one of these places without knowing whether there was a duly issued Federal liquor stamp?

A. I didn't pay much attention to the stamp only when I took one off a bottle.

Q. Who paid you?

A. I paid myself.

Q. What did you do with the residue of the funds if there was any, who did you give those to?

A. Mr. Lile.

Mr. McNamara: I move to strike out Mr. Mangham's testimony for the reasons heretofore given, that the matters concerning which he has testified happened more than three years previous to the inception of these proceedings and are outside the Statute of Limitations.

Hearing Officer: Objection overruled.

Mr. Schooley: It was in 1941 that he testified regarding the Heidelberg.

Hearing Officer: I don't think the period of time makes any difference regarding this hearing.

Q. 1940, wasn't it?

A. 1940.

Re-Direct Examination by Mr. Schooley.

109 Q. Mr. Mangham, at any time did you have anything to do with the purchasing of the Federal tax stamps that were displayed there?

A. No, sir.

Q. Then you wouldn't necessarily know whose name they were in?

A. No, sir.

Q. They were displayed?

A. Yes.

Hearing Officer: Those stamps were not in your name?

A. No, sir.

(Witness excused.)

H. C. GARRISON, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. Will you state your name, please?

A. H. C. Garrison.

Q. And your place of business?

A. Dexter, New Mexico, post office box 3.

Q. Mr. Garrison, what official position do you hold, if any, in the city of Dexter, New Mexico?

110 A. Mayor.

Q. You are the mayor?

A. Yes.

Q. Mr. Garrison, I will show you a photostat of an assignment of a license and ask you if you recognize that?

A. Yes.

(Marked Government Exhibit 125 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: No objection.

Q. Now, Mr. Garrison, I hand you this Exhibit 125 and will you tell what this is?

A. This is a request by the Standard Liquor Store of Roswell for a transfer of Retail Liquor license, the Town of Dexter agreeing, it was satisfactory with them for the State Liquor Board to transfer from Mr. Gregory his license to the Standard Liquor Store of Roswell.

Q. When this notation was made on the bottom "We hereby approve of the above assignment, H. C. Garrison, Mayor", who brought you this, how did this come into your possession to sign at that time?

A. By Mr. Levers.

Q. Which Mr. Levers?

A. This one here.

Q. Mr. Forest E. Levers?

Q. Mr. Forest E. Levers, the first time I ever met the gentleman, the only time I ever met him.

Q. Is this your handwriting on there?

A. No.

Q. Whose handwriting is that?

A. Mr. Levers.

Q. How do you know it is his handwriting?

A. I watched him write it; he asked me to write it; I told him he had to write it, and I watched him write it.

Q. But you signed it?

A. Yes.

Q. Did any one other than Forest E. Levers ever contact you regarding the transfer or assignment of this license from E. M. Gregory to the Standard Liquor Stores?

A. No, sir.

Q. You never were contacted by Roland E. Levers, J. Clifton Hearn, Leland P. King or W. L. Lile?

A. No, sir.

Q. This place mentioned here, what place of business is that?

A. It is known as the Dexter Bar.

Q. Who is the manager, who operates it there?

A. Joe Mares, I believe that is the name of it, I am not sure.

Mr. McNamara: No questions.

(Witness excused.)

112 W. J. WILSON, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. Will you state your name, please?

A. William J. Wilson.

Q. Your place of residence?

A. Roswell, New Mexico.

Q. Mr. Wilson, have you at any time ever been employed by either the firm of Levers Brothers or the Standard Liquor Stores, Inc.?

A. Yes.

Q. Will you state the conditions under which you were hired by whichever concern it was?

A. I was doing independent accounting right then and I had made out the income tax for Levers Brothers and the Standard Liquor Stores, and at one time Mr. Ray Levers had told me they didn't have any business system in connection with the Standard Liquor Stores and wanted to know if I could take the job to look after them; at that time I told him I didn't think I had time. Some time later, I think 1937, I made out their income taxes again and at that time after I got through with that job Ray offered me the job of what he called auditor for the Standard Liquor Stores. They had a chain at that time of seven liquor stores, and after I got through making the tax returns I went
113 to Levers Brothers office. The two brothers were present, and we made a deal under which I assumed that job.

Q. Who were present?

A. Forest and Ray. Ray had done the talking up to that time but when we made the deal under which I took the position, both brothers were present.

Q. You were not hired then by Roland E. Levers or J. Clifton Hearn or Leland P. King, as auditor for the Standard Liquor Stores?

A. No.

Q. What were your duties, Mr. Wilson, as auditor for the Standard Liquor Stores?

A. Perhaps I had better begin at the beginning. They had no accounting system that controlled the operation of

these stores; the only system they had, they had a daily record which showed the amount of money they started the day with and the amount of their sales and the amount of their cash disbursements during that day. In making out the income tax I had to delve back through all the daily records of these seven stores to assemble them in order to get at the results we needed to make that tax. Well, at that time I suggested to Mr. Ray Levers that they put in some kind of a controlling system which would assemble the records in the way that they needed to be assembled in order to furnish the Government or anybody else the information we needed; in other words, in order to keep proper records of the daily and monthly business of the seven stores.

I did that, we agreed to it, and I did that, and after I got that accounting system functioning, then I assumed my other duties as auditor of these seven stores.

It meant that at different times I visited them and got familiar with what was going on, how the business was being operated, and if there were any mistakes or methods that were wrong it was my job to report them and see if we couldn't make the necessary improvements and changes.

Q. What seven places were there at that time, Mr. Wilson?

A. In Roswell they had the Smoke House and the Green Lantern; at Clovis we had Pete's Bar which became the Standard Bar; at Hobbs we had the Worth Bar and the S. L. S. Bar; at Monument we had the Crystal Bar; and the Hollywood Bar in Hobbs at the Hardin Hotel; that made seven.

Q. Mr. Wilson, in connection with your duties as auditor, did you give orders to the various managers of these places with respect to how they should conduct the business?

A. Yes, at times I did.

Q. Were those your own orders and ideas?

Q. Well, some times they were and some times they were orders arrived at in consultation with usually Mr. Ray Levers.

Q. Did you ever during the course of your employment as auditor transmit to these managers any orders received by Roland Levers, Leland P. King or J. Clifton Hearn?

A. No.

Q. What were the orders, if you know them, to these managers with respect to the purchasing of various types of merchandise sold?

A. Well, frankly, they were based upon two lines of merchandise, one was the Blatz Brewing beverages, beers, and Walters, and the other was primarily the Schenley line of liquors.

Q. What wholesale Liquor Company handled Blatz products?

A. Levers Brothers.

Q. And Walters and Schenley products?

A. Levers Brothers.

Q. Most of their purchases were made from Levers Brothers?

A. Most of them, not all of them.

Q. Not all of them. Under what circumstances or conditions did they purchase products from other wholesalers?

A. In some of our stores we carried— for instance, we sold Budweiser beer, it wasn't one of their beers, 116 and there would be certain lines of liquors we had a demand for and we kept a certain amount of that on hand; in other words, our entire purchases in the seven stores were not made from Levers Brothers.

Q. A majority of them were or were not?

A. The majority of them were.

Q. You mentioned a minute ago the Standard Bar or Pete's Bar in Clovis. Do you know anything about the subsequent leasing of that property?

A. Yes, I know something about it.

Q. To whom was it leased?

A. Maybe I had better go back to some ancient history. It was a bar that hadn't paid, the building was leased, the premises rather was leased by the Standard Liquor Stores prior to my advent with the Company; it was leased then to a man named Wright of Artesia.

Q. It was leased then to him after it was in operation for a time by the Standard Liquor Stores as the Standard Bar?

A. Yes, it was known as Pete's Bar from until the time I came in, later on they didn't like that name so they changed it to the Standard Bar.

Q. Later on it was leased to Wright?

A. Yes, by the Standard.

Q. Who leased it to Wright?

117 A. Really, I knew nothing about it until after the preliminaries were gone through, but it was my opinion that Mr. Ray Levers—

Q. Do you know whether or not Mr. Ray Levers leased it?

A. No, I don't, that is an assumption of mine but it was Mr. Levers who told me about it, that it was going to be leased to Wright.

Q. After Mr. Wright leased it did any one else occupy the premises to your knowledge?

A. Yes, what is the name of the man who died? Frank Kirk.

Q. Do you know anything about who leased it to Frank Kirk?

A. No, I was told he was going to lease it and asked to go up there with Oran Dale; we went up one Sunday and took an inventory, that was for the purpose of taking an inventory of the fixtures that belonged to the Standard Liquor Store before he took possession.

Q. Who went up with you?

A. Oran Dale. That was our purpose in going up there, to take an inventory of what the Standard Liquor Stores owned in that store, glassware and other fixtures.

Q. That was the property of the Standard Liquor Stores, the fixtures?

118 A. Yes, Frank was bringing in some of his own stuff, he had been in operation in Roswell and we wanted to keep them separate to know what belonged to us and him after he moved in.

Q. Mr. Wilson, in connection with your duties as an auditor for the Standard Liquor Stores you say you set up some books; did you ever set up a set of books showing the capital account of the Standard Liquor Stores?

A. Well, my recollection is that I did; it seems to me it was a small amount, \$12,500.00, something like that, I may be wrong on those figures but I think I did set up a capital account.

Q. Did that show capital investments also?

A. When I went in there, there was nothing except the

daily sheets, I had nothing to start with. I did something to make it correspond to the amount of stock that was issued but I had no figures or any data on any original investment or anything of that sort.

Q. Do you know, Mr. Wilson, anything about the sale of property to Robert Prater?

A. You mean that S. L. S. property, the old Palace Bar?

Q. Yes, do you know anything about the sale of that at Hobbs?

A. Yes, I know there was a sale made to Mr. Prater.

Q. Did you have anything to do with making any entries regarding the money that was received?

119 A. I remember discussing it with Ray and Forest, but just what the outcome of that discussion was I can't remember.

Q. Mr. Wilson, I will show you Government Exhibit number 73, do you recognize it?

A. Yes, I remember that well; I used to collect the rent from Mr. Stokes when I was in Hobbs.

Q. What does this contract cover?

Mr. McNamara: We object to that, if the Court please, for the reason that the contract is the best evidence itself as to its terms and conditions and what it covers.

Mr. Schooley: All right. Question withdrawn.

Q. Mr. Wilson, I hand you Government Exhibit number 71, can you understand what that is and recognize it?

A. That is not my writing.

Q. It is not your writing?

A. No, that was the Crystal Bar at Monument; this evidently is a collection made there.

Q. Was this during the time of your employment?

A. Yes.

Q. Do you know whether or not at that time rent was being collected for the premises of the Crystal Bar and the Hollywood Club?

A. We paid rent on the Crystal Bar, we paid rent to a man named Hopper, he owned the building of the Crystal Bar in Monument; I don't know what that is, I would have to guess.

120 Mr. McNamara: Please, no guessing.

Hearing Officer: No.

A. I can't answer the question.

Q. I will not ask anything further about it then. I will show you Exhibit number 74, Mr. Wilson, and ask if you know anything about that note?

A. I think I do, yes.

Q. Do you know what this represents, this note from Standard Liquor Stores to Levers Brothers for \$1885.43?

A. Levers Brothers had an account, naturally, with all of these seven different stores and they all owed them more or less money and some time, probably at that time it was suggested that we clear the books up, giving notes to Levers Brothers to cover these various amounts that were due from these different stores; I assume that is one of those notes.

Q. Do you know whether it is or not?

A. No, unless I had access to the records I couldn't state positively, but it was about that time, that is about the time I remember being connected with this job, I do know that some notes were given for that purpose, given by the Standard Liquor Stores to Levers Brothers, to take care of these various debts from these various stores to the Levers Brothers to get them off the books as an account payable.

Q. Do you know at whose suggestion that procedure was put into practice?

A. Well, I think it was a consultation that I took part in between Ray Levers and myself; that is my recollection.

Q. I will show you Government Exhibit 75, Mr. Wilson, is that in your handwriting?

A. No.

Q. Do you know what that represents?

A. Standard Liquor Stores, Inc., I assume that it was a receipt given, an acknowledgment of that note, it looks that way to me.

Q. Well, do you know that the sums are the same? Did you keep any books of that transaction that you recall?

A. Well, that little happening that I described a minute ago, I kept those balances on our books in a part in the general controlling ledger that concerned each store, it showed different balances they happened to owe Levers Brothers at the end of each month from all these seven stores, and I would write this up. This was one of these notes covering

one store or several, I don't know, this was a receipt we gave on receipt of that note.

Q. Showing you Government Exhibit number 76, Mr. Wilson, do you know what that is and what it represents?

A. No, that was before my time.

122 Q. Government Exhibit number 77; do you know what that represents?

A. No.

Q. Showing you Government Exhibit number 78, Mr. Wilson; do you recognize that or know anything about that letter?

A. That was a letter I wrote.

Q. At whose instructions did you write that letter?

A. Mr. Ray Levers; he mentions there about Ray Levers spending only sixty-five cents in his store and I joshed him about it and told him the next time when I got back to Roswell I would tell him "For God's sake" to spend more money when he went up to Frank's place.

Q. Government Exhibit number 79, Mr. Wilson; do you recognize that letter or know anything about it?

A. I don't remember that particular letter.

Q. Government Exhibit number 80, do you recognize that?

A. Yes, I wrote that.

Q. Upon whose instructions did you write that letter?

A. Well, Mrs. Smith complained that she had some—Mrs. Billy Smith ran the Worth Bar and she complained on one of my trips that she didn't have any Canadian Club to sell and she had a lot of customers who were used to drinking Canadian Club, and my recollection is that I discussed that when I got back and she was given per-

123 mission.

Q. With whom did you discuss it?

A. I would say Ray; most of my discussions about these outlying places were with Ray because Forest wasn't always there, he was on the road a good deal, some times he was there, but in the main—of course, all this is back years ago—but in the main most of my discussions about the handling of the *affairs* of these stores was between Ray and myself; there were occasions when Forest was present but I couldn't hark back and tell you when.

Q. Do you know why she didn't have any Canadian Club whiskey?

A. Yes, I would say she was handling mostly the Schenley line.

Q. The Levers Brothers handled the Schenley line and didn't handle Canadian Club?

A. No, at many times, whenever they had Canadian Club we got it from Levers Brothers; some times they had it and some times they didn't, and there were times when they didn't have it to supply the stores, the stores got out unless they got it from some other place, but there were many times when Levers Brothers sold us Canadian Club.

Q. Government Exhibit number 81, a memorandum, do you recognize that?

A. That is my writing there, yes. That is something that I sent out to some wholesalers. Forest and Ray 124 and I discussed that. We didn't know this man Stokes, we didn't know *they* too well anyway; we didn't want to be mixed up in any bills they might owe through the fact they were occupying the S. L. S. Bar. That was for our protection, notifying the various wholesalers we wouldn't be responsible for any of their bills while they ran the place.

Q. You say "for our protection"?

A. The Standard Liquor Stores. The Standard Liquor Stores owned the S. L. S. Bar prior to the leasing of it to this Lyons.

Q. Mr. Wilson, why then did you discuss this matter with Forest and Ray Levers if it was the property of the Standard Liquor Stores?

A. Why did I?

Q. Yes.

A. Well, I will tell you why. Their explanation always was they were representing their brother's interests, he had his own affairs up in Colorado, from the start to the finish of my job I discussed all of the affairs of the Standard Liquor Stores with those two brothers.

Q. Mr. Wilson, here is Government Exhibit 82, do you recognize that?

A. Yes, that is mine. This man Stokes—at the expiration of the Lyons rental of the S. L. S. Bar we rented 125 it to this man Stokes; it was during his rental period that sale was made of the property to Bob Prater.

Q. Government Exhibit 83, Mr. Wilson, do you recognize that?

A. Yes, I was responsible for that; I wrote that and signed it.

Q. It is pertaining to the same transaction?

A. Yes, that was a memorandum I drew up along those lines.

Q. Government Exhibit 84, Mr. Wilson, do you recognize that?

A. Yes, I wrote that.

Q. Was it a usual practice for the minutes of the meetings of the Standard Liquor Stores to be sent to Roland E. Levers to sign?

A. I can't answer that, I will tell you why. Most of my time I spent away from Roswell.

Q. Did you ever attend many meetings?

A. I never attended any meetings. Lots of times the secretary, Leland King, was busy and anyway he didn't operate a typewriter, and lots of times when I got back from Hobbs, usually I would come in on Saturday afternoon, on Sunday I would go down there and write up any information he wanted.

Q. You didn't attend any directors' meetings?

126 A. No.

Q. And you don't know whether Roland E. Levers attended or not?

A. No, I don't know.

Q. Government Exhibit 85, Mr. Wilson, do you recognize that?

A. Yes, I wrote this letter and sent it to him.

Q. Government Exhibit 86, a photostat of a letter to Mr. Ernest Bridges at Hobbs, New Mexico; do you recognize that?

A. I wrote that, yes.

Q. Were you instructed by any one to write this letter containing these instructions?

A. Yes.

Q. Who instructed you?

A. Ray Levers.

Q. Exhibit 87, Mr. Wilson, do you recognize that?

A. Yes, I remember that.

Q. Who instructed you to write this letter?

A. Ray Levers.

Q. I hand you a photostat, Mr. Wilson, do you recognize that?

A. Yes, I remember that.

(Marked Government Exhibit 126 for identification.)

Mr. Schooley: This is offered in evidence.

127 Mr. McNamara: Objected to for the reason it is dated in 1939 and is more than three years old.

Hearing Officer: What is the purpose?

Mr. Schooley: May I ask the witness: Mr. Wilson, do you know what was the purpose of that document; why did you prepare it, why was it, exactly?

A. I didn't prepare it. My assumption at the time was that that was some fixtures that they had on hand that they had brought from Lamac Sotre Fixture Company, that the Standard Liquor Stores had bought from Lamac Store Fixture Company.

Mr. McNamara: I move to strike out the answer by reason of the fact that it is based on an assumption without any knowledge.

Hearing Officer: Yes, the answer will be stricken.

Q. Mr. Wilson, you signed this?

A. Leland King signed it and I signed it.

Q. Was it prepared by you?

A. No, I didn't prepare it.

Q. But you did sign it?

A. For the Standard Liquor Stores, yes; Leland King and I signed it for the Standard Liquor Stores.

Q. I hand you a photostat of a memorandum dated ~~dated~~ June 6, 1939 and ask if you recognize that?

A. Yes.

(Marked Government Exhibit 127 for identification.)

128 Mr. Schooley: It is offered in evidence.

Mr. McNamara: Objected to for the reason it is dated in 1939 and more than three years old.

Hearing Officer: The time, in my opinion, does not make any difference: Objection overruled.

Q. Mr. Wilson, did you prepare Exhibit 127?

A. No.

Q. Do you have any knowledge of your own about the transaction mentioned in there?

A. I have to go back to the beginning. When I started to install the system all the information that I had was the daily sheets that came in from the seven different stores, and as these transactions came up they were all new to me.

This was a matter that I assumed was prior to my advent with the company. They owed them some money and they finally had to put it in that kind of shape.

Q. Mr. Wilson, did you make any entries on the books of the Standard Liquor Stores of this five thousand dollars?

A. I assume that I did.

Q. Do you recall anything about this?

A. I remember the transaction, about actually making the entry I couldn't say yes and I couldn't say no, but I assume that I did.

Q. You did sign this particular note?

A. Yes, I remember signing it.

129 Q. Did you make this entry because of the fact you were setting up the books or at some one's instructions?

A. At Ray Lever's instructions.

Q. Mr. Wilson, in connection with making up income tax returns that you stated you made for Levers Brothers, do you recall making any entries on the books in connection with the Hobbs real estate for income tax purposes?

A. Are you talking of Levers Brothers?

Q. Yes.

A. Let me explain how I made my income taxes for Levers Brothers. I had no access to their books and never made any entry on their books but every year that I made an income tax for Levers Brothers, at the close of their business, when the books were closed, they gave me a report, analysis of the business, I made out my income tax, I copied from that on my income tax return, my income tax return to the Government was simply a transcript of the statement they gave me.

Q. But you didn't make any actual entries in the Levers Brothers' books themselves?

A. No, never at any time.

Q. Did you ever enter any record of any notes payable borrowed from the Bank into the books of either the Standard Liquor Stores or Levers Brothers?

A. I think that I eventually made an entry of some
130 money borrowed before my advent on the Standard Liquor Stores books.

Q. The money was borrowed before you came there?

A. Yes.

Q. And you made an entry after you got there into their books?

A. Yes.

Cross Examination by Mr. McNamara.

Q. Mr. Wilson, when did you leave the employ of Standard Liquor Stores?

A. I think it was March 15, 1942, as I remember. I may be wrong but I think that.

Mr. McNamara: I move the hearing officer to strike from the record Mr. Wilson's testimony regarding his employment by Standard Liquor Stores and the incidents in connection therewith to which he has testified for the reason that all of his testimony deals with matters that happened more than three years before the inception of this proceeding.

Hearing Officer: Objection overruled.

Mr. McNamara: No further questions.

Hearing Officer: Is Ray Levers and Ray E. Levers that you mentioned here the same Ray E. Levers that was a partner of Levers Brothers, the man that is now deceased?

A. Yes, the same person.

(Witness excused.)

131 (At this time a 15 minute recess was taken.)

MRS. JAMES A. DAILY called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. State your name, please.

A. Mrs. James A. Daily.

Q. Your place of residence.

A. Hartshorne, Oklahoma.

Q. Mrs. Daily, did you and your husband at any time operate a bar in Tucumcari, New Mexico?

A. Yes.

Q. At what time was that?

A. I believe we started in January of 1940 and we had it until December of 1941, I think.

Q. You stopped operations in 1941; was it 1939 or 1940 that you began operations?

A. It was just about the 20th of December, I believe, in 1939, just before the New Year.

Q. What was the name of the place that you and your husband operated?

A. The Central Bar.

Q. Was it called the Central Bar at the time you purchased it?

132 A. No, it was called Arlan's Beer Parlor.

Q. And you say you and your husband operated that until about January, 1941; then what happened?

A. In December of 1941 I turned it over to Levers Brothers?

Q. Mrs. Daily, in order to fix this time a little more certain; the place was purchased in the latter part of December, 1939, and operated by your husband until when?

A. I believe he was inducted in the Army in January of 1941.

Q. Then you continued the operation through managers from the time he was inducted into the Army in January of 1941 until what time?

A. Along in the middle of December of 1941, some time between the 15th and 20th.

Q. Almost a year then you operated it after your husband was called into the Service?

A. Yes.

Q. During the time that you operated the place, did you have any managers working for you?

A. Yes, first I had my husband's brother, R. C. Daily.

Q. And after him?

A. After him I had—the last manager I had was Frank Patterson.

Q. He was your manager as long then as you operated the place?

A. Yes.

Q. During that period of a year, any time did you have any dealings with the firm of Levers Brothers?

A. Yes, I bought liquor from them every month.

Q. Just tell in your own words about your business relations with Levers Brothers; what occurred, if anything?

A. Well, every week Max Cabber came up and took our order for liquor and I believe he took his orders on Monday and the liquor was delivered on Thursday and if I had the money I paid him off and if I didn't, I didn't.

Q. Did you run up a bill then of any amount?

A. A very large bill.

Q. With Levers Brothers?

A. Yes.

Q. About how much, do you recall?

A. I believe the maximum was close to \$1700.00, \$1675.00, something like that.

Q. When the bill got up to that amount, did you have any discussion with any member of Levers Brothers firm regarding the buying policy of the Central Bar?

A. O, yes, we had lots of discussions.

Q. Who did you have them with?

A. Mostly with Forest Levers.

Q. What did Forest Levers say to you, if anything, regarding the purchasing of supplies for the Central Bar?

A. He wanted me to buy all of my liquor from Levers Brothers and such liquors as I did buy outside from Anchor, Raton, and Ilfeld, he objected to very strenuously; we used to have very heated arguments on that subject. I said I couldn't operate the place on strictly Levers products, I had too many other customers who wanted other liquors; he said I was crazy; I mean, he said I could.

Q. Was that all he said? Did he say anything else?

A. Well, at one time in August he told me definitely it

would be either one hundred percent Levers store or he would close it up.

Q. Mrs. Daily, I show you a photostat of a chattel mortgage and ask if you recognize this document?

A. Yes.

(Marked Government Exhibit 128 for identification.)

Mr. Schooley: This document is offered in evidence.

Mr. McNamara: No objection.

Q. Mrs. Daily, Government Exhibit number 128 is a photostat of a chattel mortgage and note for \$1745.15. Will you tell the circumstances under which this note was issued by you in favor of Levers Brothers and the chattel mortgage issued in connection therewith?

A. The account was old and large and my understanding was that it could not be carried as an open account on their books so we would have to make a note and give a mortgage as security to cover the note. In that way they could get it off their books and it would not be carried as an open account.

Q. At whose suggestion or request did you execute those documents?

A. Mr. Forest Levers'.

Q. Mrs. Daily, I show you a photostat of a complaint in the Ninth Judicial District Court, Quay County, New Mexico, number 7693, and ask you if you recognize those papers?

A. Yes.

(Marked Government Exhibit 129 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: I object to that, if the Court please, as having nothing to do with the matters before the Court or at issue before the Court; there is no filing mark on the papers. It is a purported law suit but there is no showing it was ever filed.

Hearing Officer: What is the purpose of it?

Mr. Schooley: The purpose is to show that the firm of Levers Brothers attempted to and did exercise control over

the purchasing power and buying policies of retail liquor establishments. At the time the Central Bar at Tucumcari was operated by Mrs. Daily it was her own retail establishment and through the exercise of control by Levers Brothers they controlled the buying policies; they took 136 the note and this mortgage, this paper.

Hearing Officer: What is this paper?

Mr. Schooley: It is a complaint. It is the outgrowth of the issuance of the note and chattel mortgage in favor of Levers Brothers which has been heretofore introduced. It shows that the questions answered on their basic permit application as to their control of retail establishments is false; that they did exercise control over independent establishments.

Hearing Officer: What is there set forth in this complaint which shows they were exercising control?

Mr. Schooley: It is not shown there that they exercised control but it is introduced in connection with the note and mortgage to Levers Brothers. That shows that the Standard Liquor Stores secured this note that had been taken from Mrs. Daily.

Hearing Officer: Objection overruled.

Q. Mrs. Daily, I will show you photostat of an answer; do you recognize that?

A. Yes.

(Marked Government Exhibit 130 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Objected to for the same reason we objected to the complaint. This is an answer signed 137 by Mrs. Daily answering the complaint filed by the Standard Liquor Stores.

Hearing Officer: In this same transaction?

Mr. Schooley: Yes.

Hearing Officer: Objection overruled.

Q. Mrs. Daily, I show you another photostat and ask you if you recognize that?

A. Yes.

(Marked Government Exhibit 131 for identification.)

Mr. McNamara: Objected to for the same reasons advanced regarding the other pleadings in this case, in this alleged case; and for the further reason that this paper shows on its face that it was not approved by the Judge of the Ninth Judicial District.

Hearing Officer. Objection overruled.

Q. I show you a photostat of a bill of sale and ask you if you recognize that?

A. Yes.

(Marked Government Exhibit 132 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Is this your signature, Mrs. Daily?

A. Yes; it is.

Mr. McNamara: No objection.

Q. I show you a photostat, Mrs. Daily, of an assignment, do you recognize that?

A. Yes.

(Marked Government Exhibit 133 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: I object to this, if the Court please, for the reason that the assignment is incomplete on its face, it states that Mrs. Daily is doing the assigning but there is no statement as to whom the things are assigned to.

Mr. Schooley: This assignment was executed by Mrs. Daily in connection with the transaction mentioned before. It is the outgrowth of becoming in debt to Levers Brothers for the sum of ~~\$17,451.15~~, and the testimony will show who received the premises and who took over the property known as the Central Bar.

Hearing Officer: The stipulation ran in the name of Mrs. Daily and the Liquor Stores; this is a part of it; it will be admitted.

Q. Mrs. Daily, these papers that I have just showed you and which you testified you recognized, the ones that are signed by you were signed by you in connection with what transaction?

A. In the disposal of the Central Bar for the debt.

Q. To whom was the Central Bar disposed of?

139 A. To Mr. Forest Levers.

Q. And all the papers that I just showed you, the note and mortgage and the papers reflecting the court action, are the outgrowth of what occurrence?

A. Being very deeply in debt to them.

Q. To who?

A. To Levers Brothers Wholesale Liquor dealers.

Q. Was the Central Bar at Tucumcari taken over after these papers were signed by any one, or at about the same time?

A. It was turned over to Forest Levers and Mr. Lile in my lawyer's office during the month of December, 1941, I don't remember the exact date.

Q. Do you know of your own knowledge whether or not they took physical possession?

A. Someone did.

Q. Did you see Mr. Forest Levers and Mr. Lile take the place over, did you turn over the place to them?

A. Yes, I was in there.

Q. When they came?

A. Took my money out of the cash register and put their liquor on the shelves, and that was that.

Mr. McNamara: No questions.

Hearing Officer: In your testimony I think you stated the reason given for asking you for a note was that
140 the account could no longer be carried in an open account?

A. Yes.

Hearing Officer: Was there any representation made to you as to the character of the note you should give?

A. Well, I don't understand just what you mean by "character".

Hearing Officer: I notice this note is a demand note.

A. Yes, I knew it was a demand note.

Hearing Officer: You knew at the time they could step in the next morning?

A. Yes.

Hearing Officer: Was the representation made to you it was necessary for a demand note in order to take it out of an open account?

A. Yes.

Hearing Officer: You were led to believe that a demand note was a necessity, that a time note would not answer the purpose?

A. Yes, that was right, because I objected to a demand note.

Hearing Officer: If there was any discussion about it, I want to get that clear.

A. It was made as a demand note but the verbal
141 agreement was I was to be given an opportunity to pay it out by the month, but the note was a demand note.

Hearing Officer: In other words, your proposition was you were to have time to pay but you were to give a note that would be overdue the next day?

A. Yes.

Hearing Officer: They demanded that?

A. Yes.

Mr. Schooley: Who did you have this conversation with and verbal agreement that you could pay it out?

A. Most of my dealings, in fact I would say all of my dealings were with Forest Levers, whether there was anybody else present or not I just don't remember, it could have been Mr. Lile or Ray Levers could have been there.

Mr. Schooley: Some one else could have been present?

A. Some times they were, some times not; some times it was over the telephone.

(Witness excused.)

P. V. HART, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. State your name, please.

A. P. V. Hart.

142 Q. Your place of residence?

A. El Paso, Texas.

Q. Mr. Hart, have you at any time been employed by either firm of Levers Brothers or the Standard Liquor Stores?

A. Yes.

Q. What time do you recall you were so employed?

A. You mean the time I started?

Q. Yes.

A. It was—well, Mr. Wilson—it was the last day of February, 1940 he got the keys from the former manager and gave them to me and I opened the place on the 1st of March, 1940.

Q. What place was that?

A. The Green Lantern.

Q. And with whom did you correspond, converse or make the arrangements to assume that position with the Green Lantern?

A. I met a friend of mine from Old Mexico in El Paso and he had answered an ad in the paper for a manager for some of the Standard Liquor Stores but he had another position at the time I met him, he didn't want to go there. He asked me why I didn't try to contact them, he showed me the letter he got from the Standard Liquor Stores, so

143 I wrote a letter to the Standard Liquor Stores, to Roland Levers, and addressed it to Roswell, and I received an answer in about three days.

Q. From whom did you receive an answer?

A. It was signed by Roland Levers, Standard Liquor Stores.

Q. After the receipt of that letter what did you do, what happened?

A. The letter said—I have the letter here in my pocket.

Q. It is not necessary.

A. It stated that Ray Levers would be in El Paso in the next day or so and he would talk with me, which he did and then he wanted me to go to Roswell and make arrangements with Forest Levers. I went to Roswell and talked the matter over with Forest Levers and made arrangements to take the position.

Q. And then in February you did take over the management, after these preliminaries?

A. The first of March I went, or in February.

Q. Of the Green Lantern?

A. Yes.

Q. How long did you stay there as manager of the Green Lantern?

A. Until Dock Roberts took it over, or bought it.

144 Q. Do you recall when that was?

A. I don't remember the date right now.

Q. About how long were you there?

A. About a year and a half.

Q. While you were manager of the Green Lantern from whom did you receive your orders as to what to do?

A. Ray Levers, at any time there was any little discussion it was with him, as a rule.

Q. Did Ray Levers ever tell you that you were not free to purchase merchandise from any one that you so desired?

A. He gave me to understand that they would rather sell their own products like Schenley whiskies and Blatz beers.

Q. In the Green Lantern then while you were manager did you handle to any extent any products not sold by Levers Brothers?

A. I think on three or four different occasions we put in Budweiser and Blue Ribbon, if I remember.

Q. Was that bottled beer?

A. Yes.

Q. The main part of your whiskies were—

A. Schenley brands.

Q. Did you at any time you were working at the Green Lantern receive any orders from Roland E. Levers?

A. No, none.

156 Q. He had nothing to do with hiring you, only the letter that you mentioned receiving?

A. The one in answer to my letter.

Q. Did you ever receive any orders from Leland King?

A. No, Leland King never gave me any orders, but at one time there was a little difference in prices in bottled goods, it seemed like my Bar was a little higher than the Smoke House, and I sent for Leland and asked him if he would make me out a list the same as the Smoke House so I wouldn't have any argument with a customer; I wanted my prices to agree with theirs.

Q. Did you ever take any orders from J. Clifton Hearn?

A. I didn't even know J. Clifton Hearn.

Q. During the course of your employment at the Green Lantern, did you leave town at any time?

A. I made a trip to El Paso to see if I could get a couple of Chinamen to come and open a Chinese restaurant, it seemed they had one there before.

Q. At whose suggestion or instruction did you make this trip?

A. Ray Levers.

Q. Were you required to bear the traveling expenses yourself?

146 A. It was understood I would be reimbursed and Mr. Wilson reimbursed me when I got back.

Q. Mr. Hart, you have been in the business of managing bars and cafes for a number of years?

A. Well, I have been in the liquor business off and on for fifty-two years.

Q. During that 52 years, you have managed many different places?

A. Yes, in different states.

Q. You are familiar then with the retail liquor business?

A. Yes.

Q. Mr. Hart, in your opinion if you could have handled many more brands of merchandise than those sold by the firm of Levers Brothers, would you have been able to increase your sales and your profits?

A. Well, I couldn't—

Mr. McNamara: I objected to that because it calls for a conclusion of the witness and a speculative answer.

Hearing Officer: You may answer.

A. I don't know about the profit end of it but as far as increasing the trade, we would, because I lost customers when they came in, and especially in the beer line, and asked for Budweiser, if I didn't have it, that was that; or Blue Ribbon.

Q. Mr. Hart, in Roswell is there any seasonal trade
147 there?

A. In the summer the tourists come through there in quite a number.

Q. Would that tourist business influence the sale of all products in the Green Lantern?

A. It would the beer, yes; the majority of those tourists, as I find it, wanted Budweiser or Blue Ribbon.

Q. And for the most part the beer you handled was Blatz?

A. Blatz.

Q. Did you ever receive any instructions from Forest Levers regarding the operation of the Green Lantern?

A. No, I don't believe I ever did, nothing that amounted to anything.

Q. After the Green Lantern was sold to Dock Roberts did you work for any other Standard Liquor Store?

A. Yes, I went to the Cantina and was there two months.

Q. Who hired you for that job?

A. Mr. Lile spoke to me about it.

Q. What were you doing there?

A. Just about the same, manager.

Q. During the two months you were there, were the buying policies of the Cantina with respect to the purchasing of liquors from the firm of Levers Brothers about
148 the same as those of the Green Lantern?

A. Followed the same line.

Q. Were you ever visited while you were manager of the Green Lantern by the salesmen for other wholesale liquor dealers?

A. Occasionally some salesman would come in but I always referred him to the main office.

Q. By the main office, what do you mean?

A. The wholesale house.

Q. Levers Brothers?

A. Yes.

Q. In other words, although you were manager you didn't have the right to make any purchases from them?

A. Not anything in any amount, little trivial matters.

Q. Did you ever discuss with Ray Levers what to do, if anything, if a customer wanted one brand and you didn't have it?

A. Well, on one occasion he told me I should be a salesman and sell them what I had on hand.

Mr. McNamara: No questions.

(Witness excused.)

ALFRED C. WRIGHT, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. State your name, please.

A. Alfred C. Wright.

Q. And your place of residence.

A. Artesia, New Mexico.

Q. Mr. Wright, will you state whether or not you have had any dealings whatsoever with any members of the firm of Levers Brothers or the Standard Liquor Stores?

A. Well, yes, I was a bar tender for my brother-in-law for four years at Artesia and they bought lots from Levers Brothers, and then we bought a store, the Standard Bar in Clovis, in June, 1938.

Q. Bought the Standard Bar from whom?

A. From Levers Brothers.

Q. Tell what the circumstances were of this sale, who you talked to and what happened?

A. Some time in June Ray and Forest was in Artesia and in the back part of our place, we kind of used as a pool room; my brother-in-law was present, he was selling out

and he wanted a place for me. They told him of several places, they particularly wanted the Standard Bar sold, so my brother-in-law went up and looked at it the last Sunday in June, he was interested, and my brother-in-law gave me a blank signed check to pay for it; he was of the
150 opinion it would be seven or eight hundred, and it was more than eleven hundred when the invoice was taken off. My brother-in-law jumped me about that because it was so much more than he expected to pay. Both bar tenders are now deceased but Clyde Ramsey and John Fila said that prior to the sale there was fifty or twenty cases of cheaper whiskey sent up there just before the sale was made.

Mr. McNamara: I move to strike that out; it is pure hearsay; the men are dead.

Hearing Officer: Yes, that is hearsay.

Q. Mr. Wright, in the process of consummating the sale, what was sold or transferred?

A. Well, nothing but the stock of liquor, the fixtures were supposed to be paid for by a monthly rental of thirty dollars a month, I think.

Q. And was that \$30.00 a month paid?

A. It was paid to Ray Levers monthly, he came up there on trips at different times.

Q. Was it ever paid to any one other than Ray Levers?

A. No, sir.

Q. During the time you operated this Bar, Mr. Wright, did you ever have any conversations with any one regarding the brands of merchandise you were selling?

A. Well, insofar as we were using their fixtures and the fact they had sold it, I guess they needed the
151 outlet, they wanted us to buy all off of them. My brother-in-law had always been a free lance, he told me to buy every where. I didn't use their beer any more because their cooler system didn't keep it cool enough, the box they had leaked and they promised me a new box and I never got it, so they called my brother-in-law up over the phone, I don't know whether Ray or Forest called, and complained to him.

Mr. McNamara: I object to that as being hearsay.

A. My brother-in-law really owned the place and he told them so over the phone and if I didn't want to buy from them I didn't have to.

Q. Were you present during this conversation?

A. My brother-in-law called me back long distance and told me what they said.

Mr. McNamara: I renew my objection.

Hearing Officer: The objection is sustained. What the brother-in-law said to him would be all right.

Q. Did you ever have any conversation with Ray Levers in which conversation Ray Levers made any complaint or threatened to make any complaint?

A. He came there several times and I did get behind on some of the bills but, even so, they understood my brother-in-law was behind us and would have paid it out any time they had to have it. He complained I bought other brands from other people and I should buy from them.

Q. Ray Levers told you that?

152 A. Yes. Then later when I wanted to move the Bar back to Artesia I asked their permission and Forest objected to that strenuously.

Q. Move the fixtures and everything?

A. No, just my stock.

Q. Who objected to it?

A. They both objected, but Forest more than Ray.

Q. Did either one, Forest or Ray Levers, promise you any new equipment?

A. Yes, a new beer box, they repeated that every time I talked to them.

Q. What, if anything, would you have to do to get a new beer box?

A. I would have to sell their Blatz beer, and no other.

Q. Did you do that?

A. They never furnished it so I had to buy one of my own, so I used any brand of beer I pleased.

Q. Mr. Wright, I show you a photostat of chattel mortgage, do you recognize that?

A. Yes.

(Marked Government Exhibit 134 for identification.)

Mr. Schooley: We offer this in evidence.

Mr. McNamara: Did you ever sign this any place, did you execute such a chattel mortgage?

153 A. Yes.

Mr. McNamara: And this is it?

A. Yes.

Mr. McNamara: No objection.

Q. Mr. Wright, showing you Government Exhibit number 134, which is a photostat of chattel mortgage, what were the circumstances surrounding the issuance of this chattel mortgage?

A. Well, it was their fixtures and I was there just running it by the month and I presume they needed that for security and there was nothing else, I don't think, connected with that.

Q. Your dealings in renting the property were with Forest and Ray Levers?

A. Ray is the one that came up and invoiced and had all this prepared.

Q. This chattel mortgage is made out to the Standard Liquor Stores, Inc.; if your dealings were with Ray Levers do you know why that mortgage is issued to Standard Liquor Stores, Inc.?

A. I just supposed—

Q. Do you know?

A. No, I don't; I just done business with Levers Brothers.

Q. As far as you know, your dealings were with Levers Brothers?

154 A. Yes.

Q. Did any one make any explanation to you as to why this was drawn in the name of Standard Liquor Stores?

A. No.

Q. But you signed it at the request of Ray Levers?

A. Yes.

Mr. McNamara: No questions.

(Witness excused.)

JAMES BRISTER, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. State your name, please.

A. James Brister.

Q. Your place of residence?

A. Capitan, New Mexico, at this time.

Q. Mr. Brister, have you ever at any time been employed in any capacity by either the firm of Levers Brothers or Standard Liquor Stores, Inc.?

A. Yes, part time.

Q. At what time was this?

A. If I recall, it must have been about the middle of June, 1941.

155 Q. By whom were you hired and what were you hired to do?

A. Well, I guess I should start from the beginning.

Q. Tell in your own words just what happened?

A. Well, it seems as though this Bar was being run—

Q. What Bar?

A. The Yucca Cocktail Parlor in Carrizozo, New Mexico was being run by Mrs. Gladys Loudon, and she was in debt to Levers Brothers and also incapable in handling this business. Mr. Levers saw Mrs. Loudon—

Q. Which Mr. Levers?

A. Mr. Forest Levers saw Mrs. Loudon and explained to her how the situation was being she owed this debt and also that she was incapable of handling this business, that she turn this business over to me to manage so I could straighten the business out and pay off Mr. Levers; this was all prior to June.

I don't recall just how long it was handled in this manner but, anyway, it proved unsatisfactory and when the license came around for renewal, we knew the place was going to have to be closed because of insufficient funds of Mrs. Loudon, so arrangements were made that Mr. Levers arranged to cancel this debt and pay her something for her interest in this business in order to take care of his interests that he also had, and in this way Mr. Forest Levers cancelled his interest over to the Standard Liquor Stores, Inc. That is the way the transaction was handled.

156 Well, at this time Mr. Levers came in and talked to me and with him was Mr. Leland King and he introduced him as being in some capacity. I don't remember just what, with the Standard Liquor Stores, Inc. and Mr. Levers asked me if I wouldn't be glad to help him out in this situation for the time being as you see I ran a real estate and insurance business in Carrizozo and I also had time enough in which to help Mr. Levers out.

So he explained to me that Mr. King was in charge of the Standard Liquor Stores, so in this manner I became manager of that Yucca Cocktail Bar.

Q. Prior to the time that you became manager, did you do anything at the Yucca Bar?

A. Only keeping the lady's records, is all.

Q. You kept the records at the Yucca Bar prior to the time you became manager?

A. Yes.

Q. Did you do that for Mrs. Loudon or Mr. Levers?

A. I did that for Mrs. Loudon and also Mr. Levers after he took over.

Q. Did you have anything to do with it whatsoever prior to the time he took over?

A. Yes, I did, I had kept the books ever since 1939.

157 Q. You were familiar with the business at the Yucca Bar?

A. Yes, I realized all the time that the business was going in debt but there seemed to be family troubles.

Q. Mr. Brister, during the time Mrs. Loudon operated the place, from whom did she make her purchases of the various merchandise she sold, the whiskey, beer and wine?

A. When she first started in business she purchased them from all liquor dealers, she purchased from whoever she wanted to buy from.

Q. What happened later on?

A. Later on she became indebted to the Levers Brothers, and it seemed as though she made more purchases from Levers Brothers.

Q. That was reflected by the books you kept?

A. Yes.

Q. And during the time you took over and operated as manager, from whom did you make your purchases?

A. Well, I made my purchases from Levers Brothers.

Q. Were you given any instructions regarding the purchasing of liquors at the time you took over the management?

A. No, not directly.

Q. Why did you do that then?

A. Well, there was no truck asking me to buy but I knew this salesman when he came around, I don't know whether I bought it or not but the stuff was delivered and I paid for it.

Q. Was there any time any was delivered that you didn't order?

A. Some times, yes.

Q. And that was from Levers Brothers?

A. That was from Levers Brothers.

Q. No other liquor company delivered what you didn't order?

A. No, sir.

Q. Who was the salesman, do you recall, that would come around?

A. That was Mack Cabber.

Q. They had a salesman named Mack Cabber?

A. He was the salesman at that time.

Q. Mr. Brister, I will show you this photostat of a chattel mortgage and ask you if you recognize that?

A. Yes, I made that chattel mortgage.

(Marked Government Exhibit 135 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: No objection.

Q. Showing you Exhibit number 135 which you stated you recognized and executed, why was that chattel mortgage executed?

A. This chattel mortgage was issued because—

159. Mr. McNamara: This is a release of a chattel mortgage, isn't it?

A. This is a release right here of the chattel mortgage which was made before.

Q. Why was that released?

A. This is a release of a chattel mortgage that Mrs. Loudon made to Levers Brothers some time prior to this, I

also made that too, because of her indebtedness to the Levers Brothers.

Q. I will hand you photostat of a bill of sale and ask you if you recognize that?

A. Yes

(Marked Government Exhibit 136 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: I object to the introduction of that because it is a photostat of a document that was never signed.

Mr. Schooley: This is a photostat of a copy of the original.

Mr. McNamara: I object to it; it is not the best evidence.

Hearing Officer: Where did the copy come from?

Mr. Schooley: The copy was made by the County Clerk.

Hearing Officer: What is the purpose?

160 Mr. Schooley: The purpose of this is to show the transfer of this property from Gladys Loudon to the Standard Liquor Stores, Inc.

Hearing Officer: Let me ask the witness a question: This release of mortgage that has been presented here as evidence shows that the Levers Brothers on June—I can't see what day—of 1944 gave to Gladys Loudon a release of the mortgage. Do you know what that mortgage was on?

Mr. McNamara: I object to his testifying about it. The mortgage itself would be the best evidence as to what it covered.

Hearing Officer: Do you have it here?

Mr. Schooley: Mr. Fahey, I think, as I recall the circumstances the original mortgage was picked up by Mr. Brister at the time this was released and is not now in existence.

Q. Is that correct, Mr. Brister?

A. I remember the mortgage quite well, I made it out myself, but I can't tell you where it is. I know it was recorded, it is on the court records.

Hearing Officer: You are familiar with the mortgage of which this is a release?

A. Yes, I made both of them.

Hearing Officer: You made out the original?

A. Yes.

161 Hearing Officer: For what was it given?

A. Identically the same equipment as given in the bill of sale.

Hearing Officer: And that was at the time when they were discussing with you to go in and keep the records for a while to see if she could pay out?

A. Yes, they gave me complete power of attorney to try and hold the business in her name; they were trying their best but the lady was incapable.

Hearing Officer: Was a note given in connection with the mortgage?

A. I think so, I am not sure.

Hearing Officer: That note covered her indebtedness to Levers Brothers?

A. Yes.

Hearing Officer: And this is the release of it?

A. Yes.

Hearing Officer: I don't think we need anything more.

Mr. Schooley: From the County Clerk we received a copy and this is a photostat of the copy we received from the County Clerk.

Hearing Officer: You have the original in your possession?

Mr. Schooley: We have the original of this photostat which is the copy supplied us by the County Clerk.

Hearing Officer: It may be admitted.

162 Mr. Schooley: We have a certified copy here of the release of mortgage; that photostat is a photostat of the certified copy.

Hearing Officer: Is that true of the mortgage of which this is a release?

Mr. Schooley: We have no copy of the original mortgage of which this is a release.

Hearing Officer: They will be admitted. You are familiar, Mr. Brister, with this bill of sale?

A. Yes.

Hearing Officer: Does this bill of sale cover the same property that the mortgage covered?

A. Yes.

Hearing Officer: And was given in order to secure this release?

A. Yes.

Hearing Officer: It may be admitted (Exhibit 136).

Q. I hand you a photostat, Mr. Brister, and ask if you recognize that, if you have ever seen it before?

A. I am afraid not, I know the contents but I have never seen this.

Q. I hand you a photostat of a letter dated July 9, 1941; do you recognize that?

A. Yes, I dictated this letter.

(Marked Government Exhibit 137 for identification.)

Mr. Schooley: We offer this in evidence.

163 Mr. McNamara: Objected to as not the best evidence.

Mr. Schooley: This is a photostat of a letter written by Mr. Brister to Mr. Forest E. Levers. If they desire the original they can produce it; it is not available to the Government.

Hearing Officer: It is admitted.

Q. Mr. Brister, I show you Exhibit 137; will you explain why you wrote that letter to Mr. Levers?

A. I wrote this letter because Mr. Forest Levers asked me to take care of this for him when the transaction was closed on the day the bill of sale was made, he said "You

take care of the bill of sale and file it, and also get the release and everything from the lady".

Q. And the bill of sale and release you refer to are the ones we just introduced in evidence?

A. That is right; he asked for them and I mailed them to him, and this is the letter here showing I did that.

Q. Mr. Brister, I show you a photostat, do you recognize that?

A. I don't believe I can answer that; I am kind of in doubt is the reason, I believe I can't answer it. I have seen a document which was quite wider than this, I believe I have seen it—just a minute.

Q. Is that in your handwriting?

A. No, sir, this is not my handwriting.

164 Mr. McNamara: I think the witness ought to answer the question as to whether he recognizes it or not; I don't want him to go through a lot of his old records in order to convince himself.

Hearing Officer: Yes.

Q. Do you recognize that or don't you?

A. Yes.

(Marked Government Exhibit 138 for identification.)

Mr. Schooley: It is offered in evidence.

Mr. McNamara: I object to it for the reason it is not the best evidence. The witness has already testified they are not his figures. There is no showing of any kind which indicates the figures are correct or accurate.

Mr. Schooley: The witness has testified that he does recognize it and if it is admitted in evidence he will testify further regarding this particular document.

Hearing Officer: What is the purpose?

Mr. Schooley: The purpose of that is to show that purchases of the Yucca Bar were made from Levers Brothers.

Hearing Officer: You recognize this as being the figures?

A. I recognize it.

Hearing Officer: Admitted.

Q. Mr. Brister, I will show you Exhibit number 138 and ask you to explain what that pretends to be, what that set of figures represent?

A. It seems as though when I made my report in September there was a discrepancy, I never did quite understand it. These figures here were submitted to me by Mr. Lile, he mailed these figures to me and explained that I had made a mistake; and there is nothing further that I can say about it. Does that answer your question?

Q. Yes. That is sufficient. The document will speak for itself with respect to the purchases covered by that particular period.

Mr. Brister, I hand you a photostat of a letter addressed to you; do you recognize that?

A. Yes, I received that letter.

(Marked Government Exhibit 139 for identification.)

Mr. Schooley: It is offered in evidence.

Mr. McNamara: Objected to as not the best evidence.

Mr. Schooley: That is a photostat of the original letter received by Mr. Brister and he recognizes it as a photostat of the letter he did receive, written by or at least bears the signature of Forest E. Levers. The Government desires to introduce it for the purpose of showing that while Mr. Brister was manager of the Yucca Bar he did receive his instructions from one of the members of the firm of Levers Brothers and not from any member of the Standard Liquor Stores.

166 Hearing Officer: Admitted.

Q. Showing you Government's Exhibit number 139, Mr. Brister, will you explain why this letter was written and what the conversation was mentioned by Mr. Levers on the day prior thereto?

Mr. McNamara: I object to his testifying as to Mr. Levers' motives in writing the letter; he couldn't possibly know that.

Hearing Officer: Objection sustained.

Mr. Schooley: Yes; I will withdraw the question.

Q. Will you explain, Mr. Brister, what the conversation was the day before that is mentioned in this letter between you and Mr. Forest Levers?

A. He was giving me instructions how to handle the business.

Q. And a lease was drawn up?

A. In other words, I will go ahead and explain further. He was giving me instructions how to send in my forms to the Standard Liquor Stores, and so on; in other words, they had changed hands and things were different. Of course I must say that Mr. Leland King was present at that time on every occasion but he never did carry on the conversation with me.

Q. In other words, Mr. Forest E. Levers then gave you your instructions as to how to operate the Yucca Bar?

167 A. That is correct.

Q. And how the lease and all incidentals thereto should be handled?

A. Yes, in fact you can tell by reading the bottom of the letter what the prior conversation was about.

Q. Mr. Brister, when the new tax stamp was taken out, in whose name was that tax stamp taken out, do you know?

A. I believe, Standard Liquor Stores, Inc., if I remember correctly.

Q. Mr. Brister, after the place was operated by you for a short time, managed by you I should say, what if anything was done with the Yucca Bar?

A. The Yucca Bar was sold.

Q. Was sold to whom?

A. I believe the lady's name was Irma Todd.

Q. Do you know who made the deal or conducted the negotiations with Irma Todd?

A. I was present when the negotiations were made.

Q. Who were they made between, who was there representing the owners of the building or the stock and premises and fixtures, or whatever was transferred?

A. I was present and also Mr. Levers.

Q. Forest E. Levers?

A. That is correct.

Q. And Forest E. Levers conducted the negotiations with Irma Todd in your presence?

168 A. No, it was conducted with her husband, Frank Todd.

Q. Was any one present there to your knowledge from the Standard Liquor Stores?

A. Well, the finishing touches on the deal wasn't closed that day, there was no one present there from the Standard Liquor Stores.

Q. When the agreement was reached?

A. The agreement was reached that day in the offices of Mr. Hall there, the attorney, but it wasn't closed that day.

Q. When was it closed?

A. As soon as the Standard Liquor Stores, Inc. could send a bill of sale.

Q. Did you see the bill of sale?

A. No, I did not.

Q. After the place was sold to either Frank Todd or Irma Todd, did you settle up the affairs for the Standard Liquor Stores or Forest Levers?

A. Yes, I closed out all the affairs.

Q. And was there any moneys due any one?

A. All debts were paid and there was a small fund left over, I turned it over to Mr. Levers.

Q. Do you recall the amount of the purchase price paid by Todd to Standard Liquor Stores?

169 A. Yes, approximately.

Q. What was that approximate amount?

A. I believe it was around \$2400.00, I counted the money but I don't remember, it was all in small denominations.

Q. You actually handled the money?

A. Yes, I counted the money.

Q. To whom did you give that money?

A. I handed the money to Mr. Forest Levers.

Q. Mr. Brister, I show you a photostat of a check; do you recognize that?

A. That is the last check drawn by the Yucca Bar, yes.

Q. You recognize it?

A. Yes.

(Marked Government Exhibit 140 for identification.)

Q. Was the account at the Yucca Bar in your name, Mr. Brister?

A. That is correct.

Mr. Schooley: Offer this in evidence.

Mr. McNamara: No objection.

Q. Mr. Brister, Exhibit number 140, being a photostat of a check signed by you, what does that represent?

A. I said a while ago it was the closing out of the Yucca Bar account.

Q. The check is signed by you and made payable to you; did you cash that check?

170 A. Yes, I cashed that check.

Q. That \$150.00 that you secured in cash, what did you do with that \$150.00?

A. I turned that \$150.00 over to Mr. Forest Levers.

Mr. McNamara: No questions.

Hearing Officer: Mr. Brister, this sale of this property after you had taken care of it, the sale was made, if I understand correctly, in your presence?

A. That is correct, sir.

Hearing Officer: By Mr. Forest Levers?

A. That is correct, sir.

Hearing Officer: And at that time this property was in the name of this Liquor Store?

A. That is correct.

Hearing Officer: And you were working for the Liquor Store at that time?

A. Yes.

Hearing Officer: You closed the deal and took the purchase payment and turned it over to Mr. Forest Levers, is that correct?

A. I turned the money over to Mr. Forest Levers, yes.

Hearing Officer: You collected the money that was paid for the store?

A. In other words, I counted it.

Hearing Officer: It went through your hands?

171 A. It went through my hands.

Hearing Officer: Through your hands from the husband of the woman who purchased it?

A. Yes.

Hearing Officer: And you turned it over immediately to Forest Levers?

A. That is correct.

Hearing Officer: There was no representative present of the Standard Liquor Store?

A. Not at that time, no.

Hearing Officer: On the day when this contract was made in your presence for the sale of it, the sale was completed except that the money would not be paid over until the Standard Liquor Stores furnished a bill of sale, is that correct?

A. That is correct, I believe that is correct, yes.

Hearing Officer: Then there was no one at any time so far as you know, and you were present at all times, that represented the Standard Liquor Stores?

A. Not at that time.

Hearing Officer: At the time of the sale or at the time of the transfer?

A. No; sir.

Cross Examination by Mr. McNamara.

172 Q. When this money was paid to you, who was present at that time, anybody besides you and the gentleman that did the paying?

A. Yes.

Q. Who was it?

A. Attorney John Hall.

Q. Who did he represent, if you know?

A. He represented the Standard Liquor Stores, if I remember correctly.

(Witness excused.)

(At this time a recess was taken until the following morning at 9 o'clock, the hearing to be resumed in the office of the Alcohol Tax Unit, 319 Rosenwald Building by reason of the fact that the U. S. Civil Service Commission required

the room in the Federal Building being used for the hearing.)

January 22nd, 1944, 9 A. M.

Hearing Officer: As both parties are present and ready to resume, the Government may proceed.

HERMAN PLATT, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. Will you state your name?

A. Herman Platt.

Q. And your official position, if any?

173 A. Investigator for the United States Government, Alcohol Tax Unit, Denver.

Q. You have held that position for about how long?

A. Something over nine years.

Q. Prior to the time you became an investigator in the Alcohol Tax Unit, Mr. Platt, what sort of business experience, if any, have you had?

A. My experience has been almost all together in the line of accounting work, some of it, in fact a good deal, in supervisory capacities, as well as in the beginning, of course, as an assistant bookkeeper, bookkeeper, auditor, comptroller, things like that.

Q. For a period of how many years would this experience cover?

A. Ever since I left High School in 1907.

Q. Outside of the practical field, have you engaged in any studies of accounting?

A. Yes, I studied at the Broaker School of Accounting in New York City prior to 1910, and I studied a semester or two at night at the New York University, and I have taken some special accounting work since.

Q. In connection with your prior experience and your experience now in the Alcohol Tax Unit, have you had occasion to make examinations and audits of book-
174 keeping systems?

A. Yes.

Q. Mr. Platt, at any time in the past few years have you been called upon to make an examination of the books of

either the firm of Levers Brothers or Standard Liquor Stores, Inc.?

A. Both firms.

Q. When was this examination made?

A. I first made an examination of Levers Brothers back in 1935.

Q. I didn't mean that time; the period covered.

A. I made an examination of Levers Brothers and Standard Liquor Stores books in the period August 17, 1942 to September 2, 1942.

Q. And what was the purpose of this examination?

A. It was on assignment in connection with an investigation being conducted there by special investigators D. W. Black, John M. Schooley, investigator Hill and myself.

Q. What was the purpose of the examination of the books, what were you trying to determine from the books and records of the firm?

A. Trying to determine whether or not there was any record on either company's books, or both, to show a control of connection between the two firms.

Q. Did you find any such connection?

175 Mr. McNamara: That calls for a conclusion; I object to that; the witness ought to state the facts and let the Court decide.

Hearing Officer: Sustained.

Mr. Schooley: I will withdraw the question.

Q. What entries did you find on the books that would be interlocking entries?

A. I found several matters that to me appeared to be interlocking. For instance, in the notes payable account I found entries on the Levers Brothers' books that were notes executed by Standard Liquor Stores, Inc. and payments on these notes, interest payments on these notes that the Standard Liquor Stores had executed were definitely charged to the interest expense account of Levers Brothers.

Q. In connection with your examination, Mr. Platt, did you examine the minute books of the Standard Liquor Stores?

A. Yes.

Q. Did you find in there anything to indicate authorization to purchase and establish other liquor stores?

A. To make purchases of specific liquor stores, no. I didn't find any such record in the minute book.

Q. In your examination of the books of the Standard Liquor Stores, can you state whether or not the Standard Liquor Stores have ever been a profitable concern?

176 A. Well, the condition I found with regard to the Standard Liquor Stores is that prior to 1937 there were practically no books, that is of control accounts, there were some memorandum records or daily reports different stores had been making and subsequent to 1937 there was more books than previous, but not a complete set of control books showing assets, liabilities, capital, items that would be expected or should be kept by a corporation.

Q. The books that you examined, your examination was made in 1942, from the period of 1937 then until 1942, did that show that the Standard Liquor Stores was operating at a profit?

A. Well, as I said, there weren't enough accounts established to tell whether or not they were making a profit or losing money; there weren't any profit accounts, no compilation of expenses and earnings, as such.

Q. Then from the books of the Standard Liquor Stores, Inc. that you examined, it was impossible to tell whether or not the concern was profitable, whether the operations, rather, were profitable?

A. Short of setting up a complete write-up of the activities and operations of the Company over that period, it would not have been possible.

Q. In other words, there weren't enough books kept to tell whether or not the Standard Liquor Stores, Inc.
177 were making a profit or not?

A. That is right.

Q. Mr. Platt, do you know who kept the books and records of the Standard Liquor Store, Inc. at the time you made the examination?

A. Well, just from information that was given me by Mr. King, a Mr. Wilson and Mr. Lile.

Mr. McNamara: I object to that as hearsay.

Q. Do you know?

A. I saw the books and became acquainted with the handwriting of the different gentlemen and judging from that, Mr. Wilson kept them for a period of about two years beginning in 1937 and subsequent to that they were kept, I think, by Mr. Lile.

Q. That is the books of the Standard Liquor Stores?

A. Yes.

Q. Mr. Platt, have you ever seen the stock certificates issued by Standard Liquor Stores, Inc.?

A. Yes.

Q. Do you recall the number of shares issued by Standard Liquor Stores, Inc.?

A. One hundred shares.

Q. Can you state in whose name those 100 shares appeared at the time you saw them?

A. There was 92 shares in the name of Oran C. Dale and the balance of 8 shares was distributed, I think, 178 between Mr. Hearn, Mr. King, I don't recall exactly now—92 of the 100 were in the name of Dale, that I remember definitely—it must have been 94.

Q. Mr. Platt, I will show you a photostat of a ledger sheet and ask you if you recognize that?

A. I do.

(Marked Government Exhibit 141 for identification.)

Mr. Schooley: Offer this in evidence.

Mr. McNamara: Objected to for the reason that it appears to be dated in 1937 and beyond the period of limitations.

Hearing Officer: Objection overruled.

Q. Mr. Platt, handing you Exhibit 141, will you state what that ledger sheet is and what it covers, in part?

A. This is a ledger sheet from the 1937 ledger of Levers Brothers, and this is a copy, a photostat, of the original ledger sheet which I secured from the office of Levers Brothers in Roswell, New Mexico, on the 31st day of August, 1942.

Q. There are a number of entries here; included among those entries are there any that show any relationship between the financial transactions of the two companies, the Standard Liquor Stores, Inc. and Levers Brothers?

A. Well, there are a number of transactions here which on their face indicate that they are entries affecting the S. L. S., Inc., one particular entry on August 9 which reads: "Credit number 15182, S.L.S. Inc. settle note S.L.S. Inc. credit", that is notes receivable account is credited, thereby reducing the asset account of Levers Brothers of notes receivable by the sum of \$1885.43 on account of this entry.

Q. Mr. Platt, showing you Government Exhibit number 74; which is a demand note for \$1885.43 signed Standard Liquor Stores, Inc. by Leland P. King, Secretary and treasurer, in favor of Levers Brothers, I will ask you if that notes bears any relationship to the notes receivable account that you just mentioned?

A. This note bears a notation: "Paid August 9, 1937" which is the identical date of this entry. It also bears the notation: "Credit No. 15182", which is the identical number shown on the entry, and the amount is exactly the same.

Q. Mr. Platt, Government Exhibit 75, a photostat of a credit memorandum, does that bear any relationship to any entry upon Government Exhibit 141?

A. It is the original credit memorandum with exactly the same serial number, 15182, that the entry records.

Q. And the credit memorandum shows what?

A. Shows a credit S.L.S. Inc., Roswell, N. M. of a total of \$1885.43, which is the amount of the note, and the \$1885.43 is made up of \$1850.00 to offset a ledger credit balance on S.L.S. Inc. account, and a charge of \$35.43 to discount by agreement.

Q. Who issued that credit memorandum?

A. It appears to be a form of Levers Brothers.

Q. Are there any entries on Exhibit 141, Mr. Platt, that show any relationship between the Standard Liquor Stores, Inc. and the firm of Levers Brothers?

A. There are a number of entries here on this notes receivable account indicating payments by Standard Liquor Stores, Inc. on various notes. There is an entry on March 3 of 1937 referring to a note of February 23, 1937 given by S.L.S. Inc. to Levers Brothers amounting to \$7805.67. There is an entry on September 18 referring to the Crystal Bar, the notation being "Transfer from accounts receivable \$153.21". From the nature of the entry it would appear

to be a note received from the Crystal Bar. On September 20 there is an entry for the Crystal Bar which reads: "Merchandise transferred to new account". A credit of \$736.88 to notes receivable, which is in effect a reduction of the notes receivable assets of Levers Brothers.

Q. Mr. Platt, I will show you a photostat of another ledger sheet and ask you if you recognize that?

A. Yes.

(Marked Government Exhibit 142 for identification.)

181 Mr. Schooley: This is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: It is admitted.

Q. Showing you Government Exhibit number 142, Mr. Platt, will you state what that ledger sheet is and what it covers?

A. This is a copy of a columnar journal cash book sheet of Levers Brothers for the month of June, 1938. There is an entry on here, the 6th line from the top, indicating that Levers Brothers received in cash the sum of \$8275.00 and that money had been transferred from the Lea County Bank. The notations on the entry indicate that \$4000.00 was received on March 18, 1938 and \$4275.00 on April 1, 1938, and the payment arose out of the sale of real estate at Hobbs.

Q. Mr. Platt, showing you Government Exhibit 53 which is a photostat of a certified copy of the property record showing the list of the warranty deeds and mortgage deeds of record on Lot 11, Block 35, Original Town of Hobbs, New Mexico, from January 1, 1934 to March 4, 1939, I ask you is there any entry in there that bears any relationship to any entry on Exhibit 142?

A. 142 refers to the sale of real estate at Hobbs and this property record also shows that a sale was made approximately at that time, that is, the same month and same year.

Q. Are the amounts received the same?

182 A. Well, this County Clerk's record doesn't show the total amounts received, it only shows the amount of mortgage. That amount of the mortgage, however, is not exactly the same as the second payment received here by

Levers Brothers but it is just \$225.00 short, the mortgage being \$4500.00 and the entry \$4275.00.

Q. Mr. Platt, I will show you a photostat of a ledger sheet and ask you if you recognize that?

A. Yes.

(Marked Government Exhibit 143 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Showing you Exhibit 143, will you explain what that is and if there are any entries in there that *shw* a financial connection between the Standard Liquor Stores, Inc. and the firm of Levers Brothers?

A. This is a photostatic copy of the original ledger sheet from the 1936 ledgers of Levers Brothers, the original of which I secured at their office in Roswell, New Mexico on August 31, 1942.

The account is entitled "Notes payable". There are a number of entries here indicating payments made by Levers Brothers to the First National Bank. For instance, on the first line, June 20, 1936, it reads: "First National S.L.S. Inc. check 3887, \$500.00", a reduction in the notes payable liabilities of Levers Brothers.

183 On the third line, dated June 23: "First National S.L.S. Inc. check number 3897, \$500.00".

On the fifth line: "June 29, S.L.S. Inc. check number 3930, \$500.00."

Q. Mr. Platt, showing you Government Exhibit number 76, a note signed by the vice president and secretary and treasurer of Standard Liquor Stores, Inc. payable to the First National Bank of Roswell, for \$10,000.00, dated January 25, 1937, will you state whether that note bears any relationship to the items on Government Exhibit number 143?

A. On Government Exhibit 143 appears an entry under date of July 24, 1936, showing a credit to notes payable of \$10,000.00 received from the First National Bank, due in six months, and this note, Exhibit 76, is apparently a renewal of the note appearing on this entry.

Q. Are there any other items in there, Mr. Platt, besides the one you have mentioned, that show any relationship between the firm of Levers Brothers and Standard Liquor Stores, Inc. in their financial transactions?

A. There are a number of entries on this page indicating that Levers Brothers made payments to the First National Bank on account of Smoke House notes, reducing their own notes payable liability by making such payments.

Q. Mr. Platt, I will show you a photostat of a ledger sheet; do you recognize that?

A. Yes.

(Marked Government Exhibit 144 for identification.)

Mr. Schooley: We offer this in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Showing you Government Exhibit number 144, I will ask you if there are any entries there that show any financial relationship between the Standard Liquor Stores, Inc. and Levers Brothers?

A. No, sir.

Q. Is there any connection shown on that ledger sheet that indicates any unusual transactions with respect to their notes payable accounts?

A. Yes.

Q. What is that?

A. This is the last page of the notes payable account of Levers Brothers, this being a photostatic copy of the original which I secured at their office in Roswell, New Mexico on August 31, 1942.

On December 31st, the last entry or transfer reads: "Adjustment to undivided profits \$14,790.55", which entry reduces the book liability of Levers Brothers on account of notes payable from \$51,095.89 to \$36,305.34, this latter amount being the amount shown as transferred to the next year's ledger.

This entry, in my opinion, is not in accordance with accepted and required bookkeeping standards in that it arbitrarily reduces liabilities of the firm whose books they are found in.

Q. Mr. Platt, I show you a photostat of ledger sheet and ask you if you recognize that?

A. Yes.

(Marked Government Exhibit 145 for identification.)

Mr. Schooley: It is offered in evidence.

Mr. McNamara: , Same objection.

Hearing Officer: Same ruling.

Q. Mr. Platt, I show you another photostat and ask you if you recognize that?

A. Yes.

(Marked Government Exhibit 146 for identification.)

Mr. Schooley: Offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Showing you Government exhibits 145 and 146, will you explain what these exhibits are?

A. These are photostatic copies of ledger sheets 186 from the ledger of Levers Brothers. Number 145 is from the 1937 ledger and 146 is from the 1938 ledger. They were made from the original ledger sheets which I secured at the office of Levers Brothers in Roswell on August 29 and August 31, 1942.

Q. The entries on those ledger sheets, Mr. Platt, cover what?

A. Both sheets are headed "Hobbs Real Estate, Palace Building", and the 1938 is a continuation of this same account as shown on the 1937 ledger sheet.

Q. Do you know whether the property as shown on these ledger sheets "Palace Building" is the premises occupied by any retail liquor establishment, or was at the time those entries were made?

A. Well, it would appear from Exhibit 145—

Q. No, do you know whether there was any retail establishment at that time on those premises? Have you seen any records, official records, that there was any retail establishment operating at those premises?

Mr. McNamara: I object; that calls for hearsay; the records would be the best evidence.

Hearing Officer: Objection sustained.

Mr. Schooley: I will withdraw the question.

Q. Mr. Platt, showing you Government Exhibit number 53 which is a photostat of a Lea County, New Mexico, record showing the list of warranty deeds and mortgages of 187 record on Lot 11, Block 35, Original Town of Hobbs, and ask you if the property mentioned therein covers the same real estate as covered in exhibits 145 and 146?

A. From my examination of the records of both Standard Liquor Stores, Inc. and Levers Brothers, I would say yes.

Q. On Government Exhibit number 53 there is a record of a warranty deed from D. L. Parker to Standard Liquor Stores, Inc. dated July 31, 1937, filed November 5, 1937, recorded in Book 54, page 151 of Warranty Deed records, covering the transfer of this property. Bearing in mind those dates, is the property shown as the Palace Building carried on the books of the firm of Levers Brothers as an asset at that time?

A. Yes.

Q. I hand you a photostat of a ledger sheet and ask if you recognize that?

A. Yes.

(Marked Government Exhibit 147 for identification.)

Mr. Schooley: This sheet is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Showing you Government Exhibit number 147, will you explain what that is?

A. This is a photostatic copy of a ledger sheet 188 from the 1936 ledgers of Levers Brothers, made from the original which I secured at their offices in Roswell on August 31, 1942.

Q. Mr. Platt, are there any items on that ledger sheet which show any connection between the financial transactions or interlocking financial transactions of the firm of Levers Brothers and Standard Liquor Stores, Inc.?

A. Yes, there are.

Q. What are those entries?

A. There is an entry on June 5 reading as follows: "Interest to 6/1/36 Worth Bar, George McPherson, check number 3807, \$44.81". This entry is a charge to interest expense of Levers Brothers.

On June 17 there is an entry: "First National interest, S. House Note C. 15 \$120.66". This entry is likewise a charge to the interest expense of Levers Brothers.

Q. Is that all the items of that nature that contains?

A. Yes.

Q. Mr. Platt, this ledger sheet then shows that the firm of Levers Brothers are paying interest and charging to their interest expense, interest on notes that were executed by Standard Liquor Stores, Inc.?

A. Yes.

189 Q. Handing you a photostat, Mr. Platt, do you recognize that?

A. Yes.

(Marked Government Exhibit 148 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Handing you Government Exhibit number 148, will you state what that is?

A. This is a photostatic copy of the original ledger sheet from the 1937 ledgers of Levers Brothers which was secured at their premises in Roswell on the 31st day of August, 1942.

The account is a combination of interest on notes payable and receivable and apparently is a consolidation of both interest and expense and interest earned.

Q. Showing you Government Exhibit number 77, which is a photostat of a note executed by Standard Liquor Stores, Inc. for \$4500.00, payable to the First National Bank of Roswell, I will ask you if there are any entries on Govern-

ment Exhibit 148 that show any relationship between those two documents?

A. There is an entry on the 5th line, dated January 28, 1937 which reads: "Check number 5020, interest on \$4500.00 note for three months, \$90.00".

190 On April 28 there is a similar entry for the same amount.

This ledger sheet I note also shows that on January 25, 1937 there was a payment made as follows: "Check number 5044, First National, 6 months 10th note \$400.00, 4 months on \$4500.00, \$520.00".

Q. In your examination of the books of Levers Brothers, did you find on their records where at the same period of time they had made any entries indicating that Levers Brothers had borrowed the sum of \$10,000.00 from the First National Bank of Roswell, and another entry indicating that they had borrowed \$4500.00 from the First National Bank of Roswell?

A. Yes, this page indicates it.

To amplify my answer to the previous question, the date of this entry of \$520.00 which specifies that \$120.00 of the \$520.00 is 4 months interest on the \$4500.00 note, that date is identical with this note, exhibit number 77.

Q. But Exhibit number 77 is a note executed by Standard Liquor Stores, Inc.?

A. That is true, this entry is on the books of Levers Brothers and is charged to their interest expense account.

Q. I asked you a moment ago whether you saw any entries on the books of Levers Brothers indicating that they had in the name of Levers Brothers borrowed a similar amount; are there two such items of \$4500.00, or one?

191 A. I didn't see any such entry but then I didn't see everything they had.

Q. I hand you a photostat and ask if you recognize that?

A. Yes.

(Marked Government Exhibit 149 for identification.)

Mr. Schooley: Offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Handing you Exhibit number 149, will you state what that is?

A. It is a photostatic copy of a ledger sheet from the 1936 ledger of Levers Brothers which was made from the original which I secured at their office in Roswell on August 31, 1942.

Q. What does it show?

A. It indicates the receipt of rent from Z. Johnson \$60.00, back rent \$600.00, and one item is back rent of \$125.00 from Sam Newsom, another amount of \$125.00 from Sam Newsom on June 22.

The next entry is October 9, \$100.00 from Stanley; next item Standey Bros. on November 19, \$100.00, which has a notation that it pays from 11/15 to 12/15; then an entry of \$100.00 on December 20 from Stanley Bros. paying from 12/15 to 1/15/37; the total account shows \$1210.00
192 received.

Q. That covers what premises, Mr. Platt?

A. It says "Palace Bar".

Q. And what period of time?

A. From May 15, 1936 to the end of that year.

Q. Calling your attention to Government Exhibit number 53 which shows that Lot 11, Block 35, Original Town of Hobbs, was in the name of D. L. Parker from February 18, 1935 until July 31, 1937, at which time D. L. Parker executed a warranty deed in favor of the Standard Liquor Stores, Inc. and that further the property was in the name of Standard Liquor Stores, Inc. until March 8, 1938 at which time they executed a warranty deed to Robert C. Prater, I will ask you if the period of time shown on Exhibit 149 covers the period of time I just mentioned as this property being in the name of persons other than the firm of Levers Brothers?

A. Yes.

Q. And yet Levers Brothers account shows receiving rent from the Palace Bar?

A. Yes.

(At this time a 10 minute recess was taken.)

After which the examination of Mr. Platt by Mr. Schooley was resumed.

Q. Mr. Platt, I hand you a photostat of a ledger sheet and ask if you recognize it?

A. Yes.

193 : (Marked Government Exhibit 150 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Showing you Government Exhibit number 150, I will ask you to state what that is?

A. This is a photostatic copy of an original ledger sheet from the 1936 ledger of Levers Brothers, the original of which I secured at their offices on August 31, 1942.

The sheet is entitled "Hobbs Real Estate, Palace Bar Building, S. L. S."

Q. And what do the entries there show?

A. The entries show that the account was carried forward from 1935 at which time the cash investment in that real estate was \$2013.39, then there is a series of expenses, repairs on the building, electrical work, papering and painting, carpenter work, the last entry on December 31 is a note for \$750.00 which brings the balance at the end of 1936 to \$3508.92. This period, the year 1936, is the same period in which the property was held in the name of D. L. Parker.

Q. I hand you a photostat and ask you if you recognize that?

A. Yes.

(Marked Government Exhibit 151 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

194 Q. Showing you Government Exhibit number 151, I will ask you to state what that is?

A. This is a photostatic copy of an original ledger sheet of Levers Brothers from the 1936 ledger, the original of which I secured at their office on August 31, 1942.

The sheet is entitled "Standard Liquor Stores, Inc." and it shows that on June 30, 1936, Levers Brothers charged this account with \$750.00 paid to the City Clerk at Hobbs for one-half license Palace, their check number 3979. The next entry shows \$750.00 charged to this account, paid to the City Clerk, Hobbs, for one-half license Worth Bar, check number 3980.

It also shows that on July 3 Levers Brothers received and credited this account with \$1500.00, the notation being for 2 L. B. checks at \$750.00 each; also on July 3 they received a second item of \$1500.00, the notation being "for loan".

On July 7 it shows that they received \$800.00 which they credited to Standard Liquor Stores, Inc. also for loan.

On July 25 it shows that Levers Brothers received \$500.00 which they credited to Standard Liquor Stores, Inc. the notation being "check".

195 There are no further entries until December 31, 1936 at which time they made an entry charging Standard Liquor Stores, Inc. with \$8000.00, the notation being "Note". The entry of this \$8000.00 converted a credit balance appearing prior to that amounting to \$2800.00 into a debit balance of \$5200.00. This entry of \$8000.00 in a corresponding journal which I examined bears a notation "correction".

Q. In other words, Mr. Platt, this ledger sheet shows that Levers Brothers bought certain licenses and charged them to Standard Liquor Stores, Inc. account?

A. Yes.

Q. They received certain moneys from Standard Liquor Stores, Inc. and credited to the account owing Levers Brothers by Standard Liquor Stores, Inc.?

A. Substantially that is true; it is an account which shows both debit and credit balances on the account of Standard Liquor Stores in their relation with Levers Brothers.

Q. Handing you a photostat, I will ask you if you recognize that?

A. Yes.

(Marked Government Exhibit 152 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Handing you photostat, Mr. Platt, I will ask you of you recognize that?

A. Yes.

196 (Marked Government Exhibit 153 for identification.)

Mr. Schooley: This is offered in evidence.

Mr. McNamara: Same objection.

Hearing Officer: Same ruling.

Q. Handing you Government Exhibits 152 and 153, I will ask you to state what they are and what they cover?

A. Exhibit 152 is a photostatic copy of an original ledger sheet from the 1936 ledger of Levers Brothers, the original of which I secured at their office in Roswell on August 31, 1942.

This sheet is headed "Real Estate (Eunice), Lots 6 and 7". The entries thereon show on January 18 a cash investment on the part of Levers Brothers, \$50.00; on February 20 an additional cash investment reading "Eunice real estate (Deed) \$200.00".

On May 7 of that same year a credit of \$300.00 to this account, and on December 31 a closing out to profit of \$50.00.

The indication is that the property was sold on or about May 7, 1936,

Exhibit 153 is a photostatic copy of an original ledger sheet of Levers Brothers 1937 ledger, which I secured at their office in Roswell on August 31, 1942. Thi is a

197 listing of rentals in sums of \$10.00 and \$5.00 from Mr. and Mrs. Manual on Lot 6, Eunice, the total being \$90.00, which is closed out at the end of the year to profit of Levers Brothers.

Q. Showing you Government Exhibit 52 which is a photostat of a certified copy showing the transfer of Lots 6 and 7 in Block 4, Eunice Addition, Town of Eunice, Lea County,

State of New Mexico, I will ask you to state whether or not the transfers of this property showing that they were transferred or in whose names they showed during the period just covered by you in Exhibits 152 and 153, covers the same property?

A. On Exhibit 152 the entry shows that the property was sold by Levers Brothers or at least they received the money from that on or about May 7 of 1936. Exhibit 52 shows that from January 27, 1936 until May 4, 1936 the property stood in the name of W. L. Lile, and that on May 4, 1936 W. L. Lile gave a warranty deed to Jack Striff et ux and that Jack Striff et ux gave to Levers Brothers on that same date a mortgage deed covering this property.

Also Exhibit 52 shows that the property reverted to Ray L. Levers et al. and Ray L. Levers et al. gave a deed on March 20, 1937 to Standard Liquor Stores, Inc.

Exhibit 153 shows a collection of rent by Levers Brothers subsequent to March 20, 1937 for the balance of that year.

198 Q. Mr. Platt, from your examination of the books and records of both the firm of Levers Brothers and Standard Liquor Stores, Inc. are you familiar with the places operated as retail establishments by the Standard Liquor Stores, Inc. during the period covering your examination?

A. Yes.

Q. Will you state what retail establishments were operated during that period by Standard Liquor Stores, Inc.?

A. The Smoke House, the Green Lantern, the Cantina, the Hollywood Club in Hobbs, the Worth Bar, Crystal Bar, possibly one or two others, I just can't recall without referring to the papers.

Q. From your examinations of the records, Mr. Platt, did you find any entries therein to show where any of this property had been sold and the entries did not appear in the name of the Standard Liquor Stores, Inc. or on their books?

A. Well, as I have already testified, they didn't have any asset accounts, they just had operating accounts just based on the daily reports of the different stores. When I made the examination of the Standard Liquor Stores books I

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found it wasn't possible to find any entries, there were no entries of any kind about purchases or sales of stores.

Q. Did you find any entries in the books of Levers Brothers that indicated that the money received from the sale of any of these places had been entered in the Levers Brothers books?

A. I didn't see anything in there on Levers Brothers books that I could point to definitely as the result of the sale of a Standard Liquor Stores, Inc. store.

Q. You didn't see any definite entries?

A. No.

Q. Mr. Platt, from your examination of the records will you state your opinion as to the method of bookkeeping and what the method of bookkeeping of the two firms implies?

A. From my examination of the records of both firms and from my knowledge of transactions that actually took place, I came to the definite conclusion that the affairs of both companies were so closely intermingled and intertwined that short of a complete rewriting of the books of both companies it would be impossible to separate them.

Q. From your examination of the records, Mr. Platt, would you say that the financial transactions of the Standard Liquor Stores, Inc. and Levers Brothers are so intermingled that the transactions of the Standard Liquor Stores, Inc. are in fact the transactions of Levers Brothers?

A. Yes.

Mr. McNamara: No questions.

(Witness excused.)

200 Mr. Schooley: At this time I would like to introduce into the record a copy, the authenticity of the original of which was not questioned, of a statement written by Forest E. Levers, it is in affidavit form, and dated December 17, 1934.

The purpose of introducing this affidavit into the record is in keeping with the Government's contention that the retail establishments operated in the name of Standard Liquor Stores, Inc. are in fact operated by Levers Brothers.

This affidavit states, in part: "our main retail business is carried on from the Smoke House located at 124 North

Main, where we maintain a retail establishment. R.L.D. 195677".

It is the Government's contention that the Smoke House, after the formation of The Smoke House, Inc. and the name was later changed to Standard Liquor Stores, Inc., remained the property and under the control of Levers Brothers, and it was so at the time Basic Permit No. P-8482 was issued on March 21, 1936; and was still under the control of Levers Brothers at the time Basic Permit 13-P-37 was issued to Levers Brothers December 26, 1941.

It is for that purpose, and for the purpose of showing that the answers to certain questions contained in their affidavit attached to the application or in the application for the Basic Permit were false.

201 For that reason the Government asks that this affidavit be admitted in evidence.

Mr. McNamara: Objected to for the reason that it is unidentified.

Hearing Officer: Under what conditions was this affidavit taken?

Mr. Schooley: This affidavit was executed by Forest E. Levers.

Mr. McNamara: Are you testifying to that or just reading off the document? I want the record to show that you are just reading off the document itself.

Mr. Schooley: I can read the document, the document shows all the circumstances under which it was prepared.

Mr. McNamara: I object to it for the reason it is unidentified, for the reason it is not the best evidence, for the reason that it is dated beyond the Statute of Limitations; for the further reason that it is dated behind and beyond the passage of the Federal Alcohol Administration Act and it cannot possibly have any effect on any legal requirements raised by that Act.

Mr. Schooley: This is a certified copy and verified as an exact copy; I can produce a witness who will testify that this is an exact copy of the original on file in the District Supervisor's office.

Hearing Officer: Is the purpose of the admission of this affidavit to show that these stores were operated by Levers Brothers at this time?

202 Mr. Schooley: That particular store, yes. It was my understanding at the time that the authenticity, as I stated a while ago, of that particular document was not questioned. It was objected to in the original stipulation for other reasons but I didn't think there was any question as to the authenticity of this document.

Hearing Officer: You mean this document is already in evidence?

Mr. Schooley: No, we had discussed that with counsel for Levers Brothers and I thought there was no question as to the authenticity of this particular document.

Hearing Officer: Put your witness on and verify it for the record and we will admit it.

BULA M. OLIVER, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Schooley.

Q. State your name?

A. Bula M. Oliver.

Q. State your official capacity with the Federal Government, if any?

A. FAA Mermit Clerk.

Q. In what organization?

203 A. Bonded Accounts Division of the Alcohol Tax Unit.

Q. In what District?

A. 13.

Q. Your duties, Miss Oliver, are what with respect to papers pertaining to Basic Permits?

A. I handle the applications and supporting documents and, if approved, issue the permits pursuant thereto.

Q. Miss Oliver, I hand you document marked "Copy" and ask you if you can identify that?

A. I do.

(Marked Government Exhibit 154 for identification.)

Mr. Schooley: This document is offered in evidence for the reasons heretofore stated.

Hearing Officer: Is your name on the verification, Miss Oliver?

A. It is.

Hearing Officer: And this is a copy of a record in the office of the Alcohol Tax Unit in Denver, Colorado?

A. Yes.

Hearing Officer: And is an exact copy?

A. Yes.

Hearing Officer: The document will be admitted.

Q. Miss Oliver, what is this document?

A. It is a copy of an affidavit and it is in the permit file No. P-8482 of Levers Brothers.

204 Q. It is an affidavit submitted by whom?

A. Forest E. Levers.

Q. On what date?

A. The 17th of December, 1934.

Q. That is a true and correct copy of the original on file that is in your custody and under your control in the office of the District Supervisor in Denver, Colorado?

A. Yes.

Mr. McNamara: No questions.

(Witness excused.)

Mr. Schooley: Mr. Fahey, insofar as this particular part of the hearing is concerned, the Government now rests.

Hearing Officer: The Government rests so far as the annulment proceedings is concerned.

If the respondent is ready to proceed, we will proceed.

Mr. McNamara: We have no evidence to offer.

Hearing Officer: Then the respondent will present any evidence that it may have for the purpose of showing that it is entitled to receive from the United States Government the Wholesale Dealer's Basic Permit and Importer's Basic

Permit which was applied for, and for which they have received notice from the District Supervisor of his intention not to grant.

205 It is incumbent upon the applicant now to give what evidence they have to show that they are entitled to this permit.

Mr. McNamara: The applicant has no evidence to offer.

Hearing Officer: The respondent having no evidence to present, it develops upon the Government to show what is required under the rules and regulations, to show why the permit should not be granted.

Miss Hatch: Mr. Hearer, on the part of the Government we wish to show that the District Supervisor has endeavored to get all available information in passing upon the two pending applications. He has from time to time read the informal reports and he will have before him the record of this proceeding relating to the citation in annulment proceedings.

He will also have before him what is shown as to the investigation made over the months of November and December of the past year, 1943, and January, 1944; the period to cover this month and the two months immediately prior thereto. To show what action has been taken, Mr. Hill is asked to take the stand.

W. L. HILL, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Miss Hatch.

206 Q. Will you state your name and position?

A. W. L. Hill, investigator, Alcohol Tax Unit, stationed at Roswell, New Mexico.

Q. State briefly some of your general duties and duties on specific assignments?

A. Well, I don't know the exact date I got a request from the District Supervisor to make a general investigation of my District regarding the rationing and cause of the shortage of whiskey, and I sent that report in November 30, I think.

Then December 21 I had a notice that there was a hearing regarding the annulment proceeding pending, just a notice. Then on the 23 of December I had a request from the Supervisor to find out what I could about the distribution of liquor by Levers Brothers.

Hearing Officer: That is December last?

A. Yes, I sent that report in January 7, 1944.

Q. Did you make a customary investigation? When you have had an instruction what do you usually do?

A. I usually go and check the record for whatever I can find.

Q. What territory did you cover?

A. Chaves County, I work about ten counties on the East side, but Lea, Chaves and Quay were the three counties in which I checked on this investigation.

207 Q. Name the towns.

A. Tucumcari, Hobbs, and Lovington is the county seat of Lea County where Hobbs is, and Chaves County, Roswell.

Q. Name some of the particular retail stores that you visited?

A. At Roswell I checked the invoices of the Green Lantern owned by Clude Roberts, the Quality Liquor Store owned by Harold Rives, the Bank Bar owned by Ernie Emerson, the Buckhorn Bar owned by Dock Sargent, Dinny Moore's Cafe and Bar owned by John Leokon, and Berry's Cafe and Bar owned by Alex Berry, the Blue Moon Night Club owned by Joe Skavardi, and the Variety Liquor Store owned by Ann Cabber, Nixon Cocktail Lounge owned by Jack Mask, the Norton Cocktail Lounge owned by Riley McPherson, the Collins Bar owned by Joe Lily, the Star Bar operated by Manuel Chavez, Father Bear's Den owned by Mrs. Horton; that is at Roswell.

At Artesia, 42 miles from Roswell, I checked the invoices of the Artesia Liquor Store, it is a package store, the manager is J. E. Roberts, Gussie Wood, assistant manager of the Artesia Cocktail Lounge. The Cantina Bar at Artesia, Pat O'Brien, assistant manager. The Smoke House Bar, Artesia, owned by O. W. Samuelson. Faulkner's Bar owned by L. E. Faulkner. Louie Campanelli, El Casino Bar. That is all at Artesia.

208 At Tucumcari, Jerry's Bar, Reid's Bar, Manuel's Bar, the Vorenburg Bar, all in Tucumcari.

That is all the invoices I checked.

Q. Mr. Hill, did you visit the Cantina Bar in Roswell?

A. I did.

Q. The Smoke House in Roswell?

A. Yes.

Q. In Hobbs, New Mexico?

A. In Hobbs, New Mexico I visited the Heidelberg Inn and Hollywood Club.

Q. Did you go to Dexter?

A. Yes, the Dexter Bar.

Q. Did you state that you visited the Central Bar in Tucumcari?

A. I did, but I didn't check, the manager was gone and I didn't do any checking.

Q. Did you go to the premises of Levers Brothers?

A. Yes.

Q. Did you interview Mr. Levers?

A. Yes.

Q. Did you interview the other employees at the premises of Levers Brothers?

A. I interviewed Mr. Forest Levers.

209 Q. He is what?

A. The manager and owner.

Q. You did not talk to any employees at Levers Brothers?

A. No, I checked his records, I checked his 52 A and B from June through October, 1943. I should add Mr. Lile, I talked to Mr. Lile.

Q. Was that in connection with these records?

A. Yes.

Q. The 52 records?

A. I believe—I am sure now that Mr. Lile showed me the 338 record on the premises each month, that is where I got that 338 record.

Q. Will you give your understanding of what this 338 record is?

A. What they have on the premises at the beginning of each month, what they receive during the month and what they have left at the end of the month.

Hearing Officer: Does it show to whom it was distributed?

A. 338 doesn't.

Q. Do you recall the latest month for this form 338 that you saw?

I checked that from June through October, I don't have the November account, I checked June through October.
210 ber.

Q. Approximately what was the last time that you talked to Mr. Levers during this investigation, did you talk to him in January or December?

A. No, in December.

Q. And the year?

A. 1943.

Q. Under your instructions did you make an attempt to find out as to any change in ownership or management of some of these retail firms?

A. No, I don't make an attempt, the showing I made in the report I asked Mr. Levers—maybe this will explain it: About the 20th of November Mr. Levers distributed some fifty or sixty small orders of whiskey, I think almost all of them was old, well known brands, to customers who hadn't received any for several months, some of them, and on this occasion the Smoke House, Cantina Bar, Heidelberg, Hollywood and so on, didn't receive any, and I asked him why, and he said they had gotten more than their share on the prior rationing. I made no attempt to find out who owned the retail stores.

Q. As to Cantina and the Smoke House, what is the ownership of those places at this time, did you find out?

A. Yes, the special tax stamp is in the name of the Standard Stores.

Q. Mr. Hill, did you write a report of your work
211 under your recent instructions?

A. I did.

Q. I hand you this paper, can you identify it?

A. That is the original of a copy of my report I mailed to the Denver office January 2, 1944.

(Marked Government Exhibit 155 for identification.)

Miss Hatch: This is being offered for the record. The purpose is as we have stated to show that the District Supervisor has tried to get information to consider, when final action is taken on the pending application.

Q. Mr. Hill, is this your signature?

A. It is.

Mr. McNamara: No objection.

Miss Hatch: You have the privilege of questioning Mr. Hill concerning that report.

Hearing Officer: Are you through?

Miss Hatch: Yes.

Mr. McNamara: I have no questions.

Hearing Officer: How long have you been in the employ of the Government as an investigator in the Alcohol Tax Unit?

A. Well, in the Alcohol Tax Unit practically eight years now.

Hearing Officer: And you were previously employed in an investigative capacity in the old Prohibition era?

212 A. Started in 1925

Hearing Officer: And your work in the Alcohol Tax Unit is general investigation of the Alcohol Taxing Act?

A. Yes.

Hearing Officer: You take your instructions from the District Supervisor through your investigator in charge?

A. That is right.

Hearing Officer: This report was made under instructions issued to you to make report on this proposition?

A. That is right.

(Witness excused.)

ALFRED W. LA PINE, called as a witness in behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Miss Hatch.

Q. Will you state your name?

A. Alfred W. La Pine.

Q. State your position.

A. I am acting chief of miscellaneous tax division, New Mexico District, Internal Revenue Service, Albuquerque, New Mexico.

Q. What is the name of your superior?

A. The head of the office is Mr. S. P. Vidal.

Q. His title?

213 A. He is the Collector.

Q. You stated that you are acting chief, miscellaneous Tax Division?

A. That is right.

Q. Will you state not all but some of the records that are in your custody in that position?

A. The records in my custody are those dealing with all stamps issued covering special taxes paid.

Q. What are the numbers assigned to some of the records pertaining to these special taxes?

A. Form 11, Form 11 B, Form 678, 678 A, and so on.

Q. I hand you this letter, can you identify it?

A. This is a letter I dictated to Mr. A. V. Anderson, District Supervisor.

Q. You recognize the letter?

A. Yes.

Q. Is this your signature?

A. That is my signature.

(Marked Government Exhibit 156 for identification.)

Miss Hatch: This is offered as a part of the record.

Mr. McNamara: No objection.

Q. This letter is now numbered as Government's Exhibit 156 and you can explain why you dictated the letter?

A. Under date of November 22, 1943 Mr. A. V. Anderson directed a letter to our office regarding Forms 11 stamp by the Standard Stores covering the six special tax stamps that had been issued to them.

214

This letter was in reply to Mr. Anderson's request and sets forth the manner in which the six stamps were made out by our office.

Q. For what period?

A. For the fiscal year 1944.

Q. The last date of that year?

A. June 30, 1944.

Q. They run for a year, do they?

A. They start on July 1 of one year and end June 30 of the next.

Q. I hand you this Form 11 card marked "copy", do you recognize it?

A. That is a copy of the original Form 11 that is on file in our office.

(Marked Government Exhibit 157 for identification.)

Miss Hatch: This is offered for the Government's evidence.

There are six cards, I would like for them to be marked.

(Marked Government's Exhibits 158, 159, 160, 161 and 162.)

Miss Hatch: These exhibits numbered 157 to 162 inclusive are offered in evidence.

215 Mr. McNamara: No objection.

Hearing Officer: Admitted.

Q. The notations on these I wish you to explain.

A. You mean the corrections that are shown?

Q. Yes, and all the ink notations and signatures.

A. The originals were received in our office showing the applicant the Standard Liquor Stores, Inc. doing business as whatever one of the six—for instance, the Cantina, Hollywood Bar, and they showed the officers of this organization.

Prior to the time the stamps were typed up Mr. Oran C. Dale came to our office following a phone call that he was to come and requested that we show the stamp as Standard Stores, make that one correction on the application, that we

delete the names of the officers and instead of a corporation show it as a partnership of himself and Frances Levers Dale. That took place some time around July 28, 1943, which is the date the stamps were issued as shown by the former letter.

Then on August 27, 1943 Mr. Dale again came to the office and requested that we show him as the individual owner; that was the only change to make on these applications at that time.

Hearing Officer: That covered each individual application?

216 A. Yes.

Miss Hatch: All that I have to suggest is that the record show a listing of these names so that there can be easy comparison of the record with the cards. I would like Mr. La Pine to read the name and address in order as corrected, the way they stand as issued.

A. Standard Stores doing business as Cantina Bar, 107 East 3rd Street, Roswell, New Mexico; that is Exhibit 157,

Q. This exhibit I hand you is number 158.

A. Standard Stores doing business as Central Bar, 212 South 2nd Street, Tucumcari, New Mexico.

Q. I hand you Government Exhibit 159.

A. Standard Stores doing business as Dexter Bar, Dexter, New Mexico.

Q. I hand you Government's Exhibit 160.

A. Standard Stores doing business as Heidelberg Inn, 300 South Turner Street, Hobbs, New Mexico.

Q. I hand you Government's Exhibit 161.

A. Standard Stores doing business as Hollywood Club, Hardin Hotel, Hobbs, New Mexico.

Q. I hand you Government Exhibit 162.

A. Standard Stores doing business as Smoke House, 124 North Main Street, Roswell, New Mexico.

(Witness excused.)

217 Hearing Officer: Has the Government any further evidence to submit in this case?

Miss Hatch: That is all.

Hearing Officer: Has the respondent any further evidence?

Mr. McNamara: No, sir.

Hearing Officer: Then the hearing is ended.

Treasury Department
Internal Revenue Service
Alcohol Tax Unit
Denver, Colo. 2

(Emblem)
Office of District Supervisor
District No. 13
States of
Colorado, New Mexico,
Utah, and Wyoming

In Reply Refer to

S:AVA

November 4, 1943.

Mr. Thomas P. Fahey, Thirteenth District, Alcohol Tax Unit,
Denver, Colorado.

221. Pursuant to the authority conferred upon me by Treasury Decision 4662 of July 3, 1936, Treasury Decision 4885 of February 11, 1939, Treasury Decision 4974 of June 12, 1940, and Treasury Decision 4982, effective July 26, 1940, which cover authority in Section 214 of Regulations No. 2, United States Treasury Department, effective April 1, 1931;—Also pursuant to authority in Treasury Decision 5152 of June 3, 1942, which covers Section 182.239 of Regulations 3 of the Treasury Department (1942),—

You are hereby designated to act as Hearing Officer in conducting a hearing on December 2, 1943—or at a later date if there is continuance or postponement—in the matter of the annulment of Permit 13-P-37, issued to Levers Brothers (Forest E. Levers and Oran C. Dale, dba), 209 East Second Street, Roswell, New Mexico, under date of December 26, 1941, as a Wholesaler's Basic Permit, under the

Federal Alcohol Administration Act and Regulations for resale, at wholesale, distilled spirits, wine, and malt beverages.

A. V. ANDERSON, District Supervisor.

jim

Treasury Department
Internal Revenue Service
Alcohol Tax Unit
Denver, Colo. 2

(Emblem)
Office of District Supervisor
District No. 13
States of
Colorado, New Mexico,
Utah, and Wyoming

In Reply Refer to

S:AVA

January 1, 1944.

Mr. Thomas P. Fahey, Thirteenth District, Alcohol Tax Unit,
Denver, Colorado.

279 Pursuant to the authority conferred upon me by Treasury Decision 4662 of July 3, 1936, Treasury Decision 4885 of February 11, 1939, Treasury Decision 4974 of June 12, 1940, and Treasury Decision 4982, effective July 26, 1940, which cover authority in Section 214 of Regulations No. 2, United States Treasury Department, effective April 1, 1931;—Also pursuant to authority in Treasury Decision 5152 of June 3, 1942, which covers procedures of Regulations 3 of the Treasury Department (1942),—

You are hereby designated to act as Hearing Officer in conducting a hearing on January 19, 1944—or at a later date if there is a continuance or postponement—in the matter of the proposed denials, dated December 18, 1943, of the applications filed by Forest E. Levers, Co-Partner; Forest E. Levers, Special Administrator of Levers Brothers, doing business as Levers Brothers, 209 East Second Street, Roswell, New Mexico, on Forms 1630 and 1632, executed November 29, 1943: Application for Importer's Basic Permit, under the Federal Alcohol Administration Act, and Application for Wholesaler's Basic Permit, under the Federal Alcohol Administration Act, respectively.

This notification authorizes you to consolidate the hearings with respect to these applications for permits with the hearing scheduled for January 19, 1944, on the pending annulment proceedings related to Permit 13-P-37, issued to Levers Brothers (Forest E. Levers and Oran C. Dale, dba), 209 East Second Street, Roswell, New Mexico.

A. V. ANDERSON, District Supervisor.

jm

Exhibit 1.

Form 1430-A
Treasury Department
Internal Revenue Service
Revised March 1943

Order to Show Cause

United States of America, Judicial District of New Mexico In the matter of Permit No. 13-P-37 Issued to Levers Brothers (Forest E. Levers and Oran C. Dale, (Name) dba) 209 East Second Street, Roswell, New Mexico. ss: (Address)
Docket No. FA-6

To Forest E. Levers, Co-Partner, Forest E. Levers, Special Administrator, and Oran C. Dale, Co-Administrator, 209 East Second Street, Roswell, New Mexico.

(Deputy Commissioner of Internal Revenue)

Whereas the ()
(District Supervisor of 13th District)

has reason to believe, and does believe, that you have not conformed to the provisions of the laws and regulations, particularly those specified on the reverse side hereof;

218 Now, therefore, you are hereby ordered and cited to appear before Mr. Thos. P. Fahey of District 13, Alcohol Tax Unit, at Room 319, Rosenwald Bldg., Albuquerque, New Mexico on the 2nd day of December, 1943, at 10:00 o'clock in the forenoon (not less than 15 nor more than 30 days from date of service), and show cause why the

~~(suspended)~~

above permit should not be ~~(revoked)~~¹ upon the grounds set
~~(annulled)~~
 forth on the second page of this form.

Dated this 4th day of November, 1943.

A. V. ANDERSON,
 District Supervisor, Alcohol
 Tax Unit.

(Title of officer)

I do hereby certify that on the 5 day of November, 1943,
 I served the foregoing notice on ²Levers Brothers (Forest
 E. Levers and Oran C. Dale, dba) ~~by (a) delivering a copy
 of such notice to said person, or (b) by registered mail to
 such person at the address above.~~

Dated this 5 day of November, 1943.

No. 255335

ALTON SANDERSON JR.

(Signature of person serving or mailing)

Messenger

(Title)

JAH (Illegible initial)JB

Grounds:

219 Your Basic Permit, #13-P-37, is subject to annul-
 ment proceedings under Section 4 (e) (3) of the Fed-
 eral Alcohol Administration Act of August 29, 1935, as
 amended, (Section 204 (e), Title 27, U.S.C.) in that:

You procured the permit, #13-P-37; Wholesaler's Basic
 Permit (Under the Federal Alcohol Administration Act and
 Regulations) through misrepresentation, in that the sworn
 statement, made a part of the application on Form 1632,
 contained the following under paragraphs "E" and "F"
 in the part relating to the Business History of the firm,
 doing business as Levers Brothers:

¹Strike out words not applicable.

²If service be on partner or officer of corporation, state such fact.

*Number each ground and precede statement of particulars as to each
 with the statutory denunciation. For example, it should be charged as to
 permits revocable under Section 3114 (b), I. R. C., "You have not in good
 faith conformed with Section _____, I. R. C., or Section _____,
 Regulations _____ in that" etc.; and in the case of suspension, revo-
 cation, or annulment of permits issued under the Federal Alcohol Adminis-
 tration Act, vary charge to conform with Section 204 (e), Title 27, U. S. C.

E. State whether applicant, either directly or indirectly, has actual or legal control over any other corporation, or is actually or legally controlled by any other corporation, whether such control is effected through stock ownership or in any other manner; and if so, state the extent and manner of such control, the name and address of such corporation, or corporations, together with the names and addresses of the officers, and directors of each corporation:

Have no connection with any corporation, directly or indirectly.

E. State whether applicant, or any of its officers, directors, principal stockholders, or any other person holding, or expected to hold, a substantial financial interest in the enterprise, holds any interest in any premises on which distilled spirits, wine, or malt beverages are sold at retail. If so, give particulars, including date such interest was acquired:

Do not hold any interest in any retail outlets.

You procured the permit, #13-P-37, Wholesaler's Basic Permit (Under the Federal Alcohol Administration Act and Regulations) through concealment of material fact, in that the sworn statement, made a part of the application on Form 1632, contained the following under paragraphs "E" and "F" in the part relating to the Business History of the firm, doing business as Levers Brothers:

E. State whether applicant, either directly or indirectly, has actual or legal control over any other corporation, or is actually or legally controlled by any other corporation, whether such control is effected through stock ownership or in any other manner; and if so, state the extent and manner of such control, the name and address of such corporation, or corporations, together with the names and addresses of the officers, and directors of each corporation:

Have no connection with any corporation, directly or indirectly.

F. State whether applicant, or any of its officers, directors, principal stockholders, or any other person holding, or expected to hold, a substantial financial interest in the enterprise, holds any interest in any premises on which dis-

tilled spirits, wine, or malt beverages are sold at retail. If so, give particulars, including date such interest was acquired:

Do not hold any interest in any retail outlets.

Exhibit 40

FA-7

Treasury Department
Federal Alcohol Administration
October, 1935

Application for Wholesaler's Basic Permit
Under the Federal Alcohol Administration Act.

Administrator, Ray E Levers and
Federal Alcohol Administration, Forest E Levers dba
Washington, D. C.

293 The undersigned Levers Brothers, a co-partnership, Ray E. Levers and Forest E. Levers, with principal office at Roswell, New Mexico. (Branch Office at Hobbs, New Mexico) hereby makes application for a basic permit to engage in the business of purchasing for resale at wholesale the following classes of alcoholic beverages:

Distilled Spirits, Wine, and malt beverages P 1/21/36

(Specify classes, such as distilled spirits, wine, and malt beverages) and in the receipt, sale and shipment, in interstate and foreign commerce, of the alcoholic beverages so purchased.

The applicant agrees that he will operate in conformity with the Federal Alcohol Administration Act and amendments thereto, the Twenty-first Amendment and laws relating to the enforcement thereof, with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto, and all applicable regulations, and with the laws of all States in which he engages in business.

All data, written statements, affidavits, evidence, or other

*Matter in italics in handwriting on original copy.

documents submitted in support hereof, or upon hearing hereon, shall be deemed to be a part of this application.

LEVERS BROTHERS, CO-PARTNERSHIP,
By FOREST E. LEVERS, Member.

Member.

January 6, 1944.

Verified as an exact copy of application executed January 21, 1936 on Form FA 7, as part of the basic permit file No. P-8482 for Levers Brothers.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Subscribed and sworn to before me this 21st day of January, 1936. W. L. Lile, Notary Public, for Chaves County, New Mexico. My Commission Expires: March 26, 1939.
(Seal.)

Exhibit 41.

The following is supporting sworn statement containing answers to all the items on pages two (2) to five (5) of Instructions to Applicants:

1—Name and Address of Applicant And:

- A. Levers Brothers, 209 East 2nd St., Roswell, New Mexico.
- B. Owned.
- C. Co-partnership.
- D. Funds by Ray E. Levers and Forest E. Levers, partners.
- E. No.

2—Addresses of Branch Offices, If Any.

- A. Levers Brothers, 615 Main St., New Hobbs, New Mexico.

3—Business History.

A. No.

B. No.

C. Yes—16RBWL-36 for wholesale distilled spirits, wine and malt beverages from 28th day of January, 1935, until Act was null and void by Supreme Court Ruling. Said permit was never suspended or revoked.

D. No.

E. Members of partnership had experience in beer business prior to prohibition, also have been engaged in the wholesale distribution of distilled spirits, wine and malt beverages since the repeal of the Prohibition Act.

F. First National Bank, Roswell, New Mexico, Jack Moore, Roswell, New Mexico, Johnson & Lodewick, Roswell, New Mexico, Blatz Brewing Company, Milwaukee, Wisconsin, Hiran Walker & Sons Incorporated, Denver, Colorado. Applicant has business relations with the above named references. Applicant is rated in Dunn and Bradstreet.

G. Amount of capital invested by applicant is approximately \$75,000.00. Members of partnership are interested in other lines of business—such as—real estate, oil leases and oil producing properties, alfalfa milling business and other interests.

H. No.

I. No.

J. No.

K. No.

L. No special sales organization—sales are supervised by members of co-partnership through the office at Roswell with the aid of salesmen covering territory.

M. Applicant is engaged in wholesale of distilled spirits, wine and malt beverages at this time and commenced business January, 1934.

- N. Applicant proposes to sell at wholesale distilled spirits, wine and malt beverages, and estimates that the percentage of malt beverages will run from thirty to forty per-cent of total sales.

4—State And Federal Laws.

- A. Number of State License at Roswell.....#212
 Number of State License at Hobbs.....#104
 Number of Federal License at Roswell.....#7879
 Number of Federal License at Hobbs.....#7878

All of said licenses covering the sale of distilled spirits, wine and malt beverages.

- B. Special Stamp Tax from the Internal Revenue for Roswell #7879.

Special Stamp Tax from the Internal Revenue for Hobbs #7878.

5—Funders.

- A. Not a corporation.

LEVERS BROTHERS, Co-Partnership,

By FOREST E. LEVERS, Member.

By Member.

Subscribed and sworn to before me, a Notary Public for Chaves County, State of New Mexico, this 21st day Jan., 1936. W. L. Lile, Notary Public. My Commission Expires: March 26, 1939. (Seal)

January 6, 1944.

Verified as an exact copy of sworn statement supporting the application executed January 21, 1936, as part of the basic permit file No. P-8482 for Levers Brothers.

HAZEL DILLINGHAM, Permit Clerk.

BULA M. OLIVER, FAA Permit Clerk.

Exhibit 39.

FA 9

Treasury Department
Federal Alcohol Administration
October, 1935

Permit No. P-8482

Wholesaler's Basic Permit
(Under the Federal Alcohol Administration Act
and Regulations)

Ray E. Levers and Forest E. Levers, d.b.a. Levers Brothers,
Roswell, New Mexico.

296. Pursuant to application dated January 21, 1936,
you are hereby authorized and permitted to engage,
at the above address and at branch offices and other places
of business, in the business of purchasing for resale at
wholesale distilled spirits, wine, and malt beverages, and,
while so engaged, to sell, offer and deliver for sale, contract
to sell and ship, in interstate and foreign commerce, the
alcoholic beverages so purchased.

This permit is conditioned upon compliance by you with
Sections 5 and 6 of the Federal Alcohol Administration Act
and all other provisions thereof; the Twenty-first Amend-
ment and laws relating to the enforcement thereof; all laws
of the United States relating to distilled spirits, wine, and
malt beverages, including taxes with respect thereto; all
applicable regulations made pursuant to law which are now,
or may hereafter be, in force; and the laws of all States in
which you engage in business.

This basic permit is effective from the date hereof and
will remain in force until suspended, revoked, annulled, vol-
untarily surrendered, or automatically terminated, as pro-
vided by law and regulations.

This Permit Is Not Transferable.

W. S. ALEXANDER, Administrator,
Federal Alcohol Administration.

Dated March 21, 1936

January 6, 1944

Form FA 9, issued March 21, 1936, as part of the basic permit file No. P-8482 for Levers Brothers.

Terminated 12/26/41

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk,

Exhibit 38.

Levers Brothers
Wholesale Beer, Wine and Liquors

Roswell, New Mexico, October 20, 1941.

Mr. A. V. Anderson, District Supervisor, Alcoholic Tax Unit, Treasury Department, Internal Revenue Service, Denver, Colorado..

297 Dear Sir: This is to advise you that on October 1, 1941 Ray E. Levers, one of the members of the co-partnership with Forest E. Levers, doing business as Levers Brothers, was accidentally killed. It is our intention to continue doing business under the trade name of Levers Brothers, and we understand that our basic permit will have to show who constitutes Levers Brothers, and from now on it will be Forest E. Levers, Individual, and Forest E. Levers, Special Administrator, and Oran C. Dale, Co-Administrator, of Levers Brothers.

We would appreciate your forwarding the necessary forms, to make this change by return air mail, as we understand that we have thirty days from the date of the death of Ray E. Levers, deceased, to complete this change.

Yours very truly,

LEVERS BROTHERS,

By FOREST E. LEVERS, Administrator.

FEL:fds

Verified as an exact copy of the letter in the Permit File No. 13-P-37 of Levers Brothers—January 7, 1944.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Exhibit 37.

Levers Brothers

~~Wholesale Beer, Wine and Liquors~~

Roswell, New Mexico, October 28, 1941.

Mr. A. V. Anderson, District Supervisor, Alcoholic Tax
Unit, Treasury Department, Denver, Colorado.

298 Dear Sir: In keeping with your letter of October
23, 1941 we are enclosing herewith an application for
amended basic permit, accompanied by an affidavit, each
sworn to by a Notary Public, asking that an amended basic
permit be issued as set out in our applications.

Yours very truly,

LEVERS BROTHERS,

By FOREST E. LEVERS, Special Administrator
of Levers Brothers.

FEL:fds
enc.

Verified as an exact copy of the letter in the Permit File
No. 13-P-37 of Levers Brothers—January 7, 1944.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Exhibit 31.

Form 1632
Treasury Department
Internal Revenue Service
(Rev. January 1941)

Application for Wholesaler's Basic Permit
Under the Federal Alcohol Administration Act

To District Supervisor, 13th District, Denver, Colorado.

299 The undersigned Forest E. Levers, Co-Partner; For-
est E. Levers, Special Administrator; and Oran C.
Dale, Co-Administrator of Levers Brothers, d.b.a Levers
Brothers with principal office at 209 East Second Street, Ros-
well, New Mexico, hereby makes application for a basic per-

omit to engage in the business of purchasing for resale at wholesale the following classes of alcoholic beverages:

Distilled spirits, wine and malt beverages; and in receiving, selling, and shipping, in interstate and foreign commerce, the alcoholic beverages so purchased.

The applicant agrees that he will operate in conformity with the Federal Alcohol Administration Act and amendments thereto; the Twenty-first Amendment and laws relating to the enforcement thereof; with all other laws of the United States relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto; and all applicable regulations made pursuant to law which are now, or may hereafter be, in force; and the laws of all States in which he engages in business.

All data, written statements, affidavits, evidence, or other documents submitted in support hereof, or upon hearing hereon, shall be deemed to be a part of this application.

FOREST E. LEVERS, Co-partner,
FOREST E. LEVERS, Spec. Administrator,
ORAN C. DALE, Co-Administrator.

Subscribed and sworn to before me this 28th day of October, 1941. Sylva V. Meyners, Notary Public. My comm. exp: 5-12-45. (Seal)

January 6, 1944.

Verified as an exact copy of application, Form 1632 executed October 28, 1941 as part of the basic permit file No. 13-P-37 for Levers Brothers.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Instructions.

300 An application for a wholesaler's basic permit under the Federal Alcohol Administration Act must be filed with the District Supervisor on Form 1632. In the case of wholesalers maintaining branch offices or places of business the application must be filed with the District Supervisor of the district wherein the applicant has his main office or place of business.

The application must be filed by the individual, partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, receiver, trustee, or liquidating agent, which actually operate the business. Applications may not be filed by parent corporations covering establishments proposed to be operated by affiliates. A separate application must be filed by each affiliate.

An application for a wholesaler's basic permit must be executed in duplicate, and must be accompanied by a separate sworn statement, also in duplicate, embodying the following information with respect to the specific business covered by the application:

1. Name and Address of Applicant and—

A. Give address of warehouse, if different from office address.

B. State whether applicant's place of business is owned or leased by him. If leased, give the date of the lease, the duration thereof, the name and address of the owner, and the amount of monthly or annual rental.

C. State whether applicant is an individual, partnership, or corporation. If a partnership, state the names and addresses of all partners. If individual or partnership, state trade name, if any. If a corporation, state the date of incorporation, the State in which incorporated, the amount of authorized capital, the amount of paid-in capital, the names and addresses of the officers and directors, and the names and addresses of all stockholders who hold 10 percent or more of the capital stock, including the number of shares held or subscribed for by each.

D. State the source of the funds invested in the business, the names and addresses of all persons who hold, or who are expected to hold, a substantial financial interest in the enterprise, and the amount of their interest; and state the names and addresses of all persons other than those covered by paragraph C above, who have advanced by loan, or otherwise, more than 10 percent of the capital invested in the business.

E. State whether the business is a new enterprise or

whether acquired from the holder of a wholesaler's basic permit under the Federal Alcohol Administration Act. If acquired from a permit holder, furnish the name and address of such permit holder and the number of his permit, if available.

2. Branch Offices:

List addresses of branch offices, if any, furnishing also names of branches if operated under trade names differing from name in which application is filed.

3. Business History:

A. State whether applicant, partner, or any officer, director, or principal stockholder, or firm member of the applicant ever applied for, or was connected with a Federal permit to manufacture, distribute, or use alcoholic beverages or industrial alcohol; if so, furnish the number and classification of such permit, the period of operation thereunder, and state whether such permit was ever suspended or revoked, giving details.

B. State, giving details, whether the applicant, or any person referred to in paragraph A above, has, (1) within 5 years prior to date of application, been convicted of a felony under Federal or State law, (2) within 3 years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof, or (3) ever been arrested and charged with any violation of a State or Federal law relating to liquor.

C. State the business experience of the applicant and that of all persons named in paragraph A, giving in detail, experience, if any, pertaining to the manufacturing or distribution of intoxicating liquors.

D. Furnish the names and addresses of at least five business references, including one bank reference, and briefly state the nature and extent of business relations with each; also state whether the applicant is rated by any commercial agency, and if so, give the name of such agency and the details of the rating.

E. State whether applicant, either directly or indirectly, has actual or legal control over any other corporation, or

is actually or legally controlled by any other corporation, whether such control is effected through stock ownership or in any other manner; and if so, state the extent and manner of such control, the name and address of such corporation, or corporations, together with the names and addresses of the officers, and directors of each such corporation.

F. State whether applicant, or any of its officers, directors, principal stockholders, or any other person holding, or expected to hold, a substantial financial interest in the enterprise, holds any interest in any premises on which distilled spirits, wine, or malt beverages are sold at retail. If so, give particulars, including date such interest was acquired.

G. List the names of manufacturers or distributors of distilled spirits, wine, or malt beverages who have designated the applicant as their distributing agent and specify the territory covered by such designation.

H. State whether applicant has his own sales organization. If so, specify nature and extent thereof.

I. State whether applicant is now engaged in the business covered by this application. If so, furnish approximate date applicant commenced the actual purchase and sale at wholesale of alcoholic beverages.

J. State whether the applicant proposes to sell at wholesale distilled spirits, wine and/or malt beverages and estimate percentage of the applicant's business which will be in each class of liquors.

K. State whether applicant proposes to sell at wholesale to wholesalers and retailers; or whether applicant proposes to sell at retail—to consumers only.

4. State and Federal Laws:

A. Furnish the number, or numbers, of license or licenses, to engage in the sale at wholesale of alcoholic beverages issued to the applicant by the State in which his place of business is located. State specifically whether such license, or licenses, cover the sale of any one, or two,

or all of the following classes of liquors: (1) Distilled spirits, (2) wine, and (3) malt beverages.

B. State whether the applicant has procured from the Collector of Internal Revenue, occupational tax stamps as a wholesale liquor dealer, or wholesale malt liquor dealer, and furnish the numbers of such stamps.

5. Powers:

If applicant is a corporation, set forth a copy of the powers of the corporation as stated in its articles of incorporation. If applicant is a corporation, the application shall also be accompanied by a certified copy of the by-laws or resolutions of the board of directors, authorizing an officer or officers to execute the application on behalf of the corporation.

Exhibit 32.

Application for Basic Permit.

1. Name and Address of Applicant and—

301 A. Forest E. Levers, Co-Partner; Forest E. Levers, Special Administrator; and Oran C. Dale, Co-Administrator of Levers Brothers, d.b.a. Levers Brothers, 209 East Second Street, Roswell, New Mexico.

Warehouse—same.

B. State whether applicant's place of business is owned or leased by him. If leased, give the date of the lease, the duration thereof, the name and address of the owner, and the amount of monthly or annual rental:

Owned.

C. State whether applicant is an individual, partnership, or corporation. If a partnership, state the names and addresses of all partners. If individual or partnership, state trade name, if any. If a corporation, state the date of incorporation, the State in which incorporated, the amount of authorized capital, the amount of paid-in capital, the names and addresses of all stockholders who hold 10 percent or

more of the capital stock, including the number of shares held or subscribed for by each:

Forest E. Levers, Co-Partner; Forest E. Levers, Special Administrator; and Oran C. Dale, Co-Administrator; doing business as Levers Brothers, Roswell, New Mexico.

D. State the source of the funds invested in the business, the names and addresses of all persons who hold, or who are expected to hold, a substantial financial interest in the enterprise, and the amount of their interest; and state the names and addresses of all persons other than those covered by paragraph C. above, who have advanced by loan, or otherwise, more than 10 percent of the capital invested in the business:

The business is a continuation of the co-partnership formerly composed of Forest E. Levers and Ray E. Levers, deceased, this application being filed in accordance with regulations No. 1 to obtain a new permit as a result of the terminations of the partnership by reason of the death of Ray E. Levers, deceased.

E. State whether the business is a new enterprise or whether acquired from the holder of a wholesaler's basic permit under the Federal Alcohol Administration Act. If acquired from a permit holder, furnish the name and address of such permit holder and the number of his permit, if available:

A continuation of the co-partnership of Forest E. Levers and Ray E. Levers, deceased; Forest E. Levers, Individual, Forest E. Levers, Special Administrator, and Oran C. Dale, Co-Administrator; co-partnership having been operated under Basic Permit No. P 8482.

2. Branch Offices:

List addresses of branch offices, if any, furnishing also names of branches if operated under trade names differing from name in which application is filed:

Branch office at Hobbs, New Mexico, operated under trade name of Levers Brothers.

3. Business History:

A. State whether applicant, partner, or any officer, director, or principal stockholder, or firm member of the applicant ever applied for, held, or was connected with
302 a Federal permit to manufacture, distribute, or use alcoholic beverages or industrial alcohol; if so, furnish the number and classification of such permit, the period of operation thereunder, and state whether such permit was ever suspended or revoked, giving details:

A. Never applied for any Basic Permit except wholesaler's permit, which we are operating under at the present time—No. P 8482.

B. State, giving details, whether the applicant, or any person referred to in paragraph A above, has, (1) within 5 years prior to date of application, been convicted of a felony under Federal or State Law, or (2) within 3 years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof, or (3) ever been arrested and charged with any violation of a State or Federal law relating to liquor:

The answer to 1 and 2 under B is no. Having never been convicted of a felony under Federal or State law.

(3) We were indicted for violation of Federal law but indictment was dismissed and compromise settlement was made.

C. State the business experience of the applicant and that of all persons named in paragraph A, giving in detail, experience, if any, pertaining to the manufacture or distribution of intoxicating liquors:

Have been in the wholesale liquor business since the Fall of 1933, doing business as Levers Brothers.

D. Furnish the names and addresses of at least five business references, including one bank reference, and briefly state the nature and extent of business relations with each; also state whether the applicant is rated by any commercial agency, and if so, give the name of such agency and the details of the rating:

Sylvester P. Johnson, with whom we have had relations in the Real Estate business since 1910 in a large way; Harry Puryear at present County Commissioner, general dealings in Automobile and machine business since 1910; in small way; William J. Wilson, business dealings in drilling and producing oil since 1925 in a large way; W. E. Bondurant, dealings in hay, cotton and road contracting business since 1930 in a small way.

E. State whether applicant, either directly or indirectly, has actual or legal control over any other corporation, or is actually or legally controlled by any other corporation, whether such control is affected through stock ownership or in any other manner; and if so, state the extent and manner of such control, the time and address of such corporation, or corporation, together with the names and addresses of the officers, and directors of each corporation:

Have no connection with any corporation, directly or indirectly.

F. State whether applicant, or any of its officers, directors, principal stockholders, or any other person holding, or expected to hold, a substantial financial interest in the enterprise, holds any interest in any premises on which distilled spirits, wine, or malt beverages are sold at retail. If so, give particulars, including date such interest was acquired:

Do not hold any interest in any retail outlets.

G. List the names of manufacturers or distributors of distilled spirits, wine, or malt beverages who have designated the applicant as their distributing agent and specify the territory covered by such designation:

Schenley Distillers Corporation, for the southeastern part of New Mexico; Blatz Brewing Company, for the southeastern part of New Mexico; William Jameson & Company, Inc., for the southeastern part of New Mexico.

303 H. State whether applicant has his own sales organization. If so, specify nature and extent thereof:

We have our own sales organization and cover all territory represented by us once each week.

I. State whether applicant is now engaged in the business covered by this application. If so, furnish approximate date applicant commenced the actual purchase and sale at wholesale of alcoholic beverages:

We are now engaged in business, doing business as Levers Brothers, operating under Federal Basic Permit No. P 8482.

J. State whether the applicant proposes to sell at wholesale distilled spirits, wine and/or malt beverages and estimate the percentage of the applicant's business which will be in each class of liquors:

We sell distilled spirits, wine and malt beverages, and in the past the percentage of distilled spirits has run approximately 60% of our total sales. Malt Beverage 35%, Wine 5%.

K. State whether applicant proposes to sell at wholesale to wholesalers and retailers; or whether applicant proposes to sell at retail—to consumers only:

We are selling to retailers, principally.

4. State and Federal Laws:

A. Furnish the number, or numbers, of license, or licenses, to engage in the sale at wholesale of alcoholic beverages issued to the applicant by the State in which his place of business is located. State specifically whether such license, or licenses, cover the sale of any one, or two, or all of the following classes of liquors; (1) Distilled spirits, (2) wine, and (3) malt beverages:

Two State licenses—Roswell, New Mexico No. 41, Hobbs, New Mexico No. 40.

B. Two Federal Occupational stamps—

Roswell, New Mexico No. W.L.D. 3082.

Roswell, New Mexico No. R.L.D. 11789.

Hobbs, New Mexico No. 1089 W.M.L.D.

Hobbs, New Mexico No. 16322 R.M.L.D.

5. Powers:

If applicant is a corporation, set forth a copy of the

powers of the corporation as stated in its articles of incorporation. If applicant is a corporation, the application shall also be accompanied by a certified copy of the by-laws or resolutions of the board of directors, authorizing an officer or officers to execute the application on behalf of the the corporation:

Not incorporated.

FOREST E. LEVERS, Individual.

FOREST E. LEVERS, Special Administrator Ray
E. LEVERS, Deceased.

ORAN C. DALE, Co-Administrator Ray E. Levers,
Deceased.

State of New Mexico, County of Chaves, ss:

Sworn to before me this 28th day of October, 1941. Sylva V. Meyners, Notary Public. My Commission expires May 12, 1945. (Seal)

Verified as an exact copy of sworn statement supporting the application executed October 28, 1941 by Levers Brothers (Forest E. Levers, Co-Partner; Forest E. Levers, Special Administrator; and Oran C. Dale, Co-Administrator of Levers Brothers) as part of the basic permit file No. 13-P-37 for Levers Brothers.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

January 6, 1944.

Exhibit 33.

Clerk's Certificate.

State of New Mexico, County of Chaves, ss:

305 I, D. P. Greiner, Clerk of the Probate Court in and for the County of Chaves and State of New Mexico, do hereby certify that the annexed copies of, Order, appointing Special Administrator, Order, appointing Co-Administrator, and Letters of Co-Administration of Partnership Assets, In the Matter of the Estate of Ray E. Levers, Deceased, Cause No. 1911,

are true and literal exemplifications of the record in my office.

Witness my hand and the seal of my said office this the 28th day of October, A. D., 1941.

D. P. GREINER, Clerk of the Probate Court,
JO SCHRIMSHER, Deputy.

(Seal)

Verified as an exact copy of Clerk's Certificate executed October 28, 1941 supporting the application executed October 28, 1941 as part of the basic permit file No. 13-P-37 for Levers Brothers.

January 6, 1944.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Exhibit 34.

In the Probate Court, Chaves County, State of New Mexico.

In the Matter of the Estate of Ray E. Levers, deceased.

No. 1911

Order

306 This cause coming on to be heard upon the Petition filed herein by F. E. Levers, and said Petitioner appearing in person, and by his attorneys, Frazier & Quantius, and the Court having considered the evidence, and being fully advised in the premises, finds:

1. That Ray E. Levers died on or about October 1, 1941, in the State of New Mexico, and at said time was a resident of Chaves County, New Mexico, and left an estate consisting of real and personal property in said County.

2. That there has been delay in the administration of his estate, and by reason thereof certain assets, particularly the partnership business, are in danger of being lost, injured or depreciated; that F. E. Levers is the sole surviving partner of the co-partnership known as Levers Brothers, and is a qualified and competent person to serve

as Special Administrator and Administrator of said Estate; that said surviving partner desires to be appointed Administrator of the partnership assets.

3. That the partnership assets are of the net approximate value of \$22,500.00, and that Petitioner should qualify according to law, and post a corporate bond in the sum of \$25,000.00; that no other person has applied for administration of this Estate to the present time.

It Is, Therefore, Ordered, Adjudged and Decreed that F. E. Levers be, and he hereby is, appointed Special Administrator of the Estate of Ray E. Levers, deceased, insofar as the partnership assets in the firm of Levers Brothers is concerned; that said Special Administrator qualify according to law, and post a good and sufficient surety bond in the sum of \$25,000.00, to be approved by the Court; that said Special Administrator forthwith file an inventory of the partnership assets; that Petitioner be, and he hereby is, appointed Administrator of the said partnership Estate, with the same bond above specified; and as such Administrator Petitioner is hereby directed and empowered to continue the business known as Levers Brothers in the ordinary manner, to purchase necessary merchandise, or equipment, and to disburse funds from the said partnership account as may be necessary in the usual operation of said business without any further order from this Court, keeping accurate records of all accounts for submission to, and approval by this Court.

Done at Roswell, New Mexico, October 6, 1941.

LUCIUS DILLS, Probate Judge.

(Endorsement) State of New Mexico, County of Chaves.
Filed in my office October 7, 1941. D. P. Greiner, Clerk. By
Jo Schrimsher, Deputy: (Official Seal)

Recorded in Book 19, Page 40.

January 6, 1944.

Verified as an exact copy of Order, appointing Special

Administrator as executed on October 6, 1941, as part of the basic permit file No. 13-P-37 for Levers Brothers.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Exhibit 35.

In the Probate Court of Chaves County, State of
New Mexico.

In the Matter of Ray E. Levers, Deceased, No. 1911.

Order.

308 This matter came on to be heard upon the petition of Grace L. Levers, the widow of Ray E. Levers, deceased, and it appearing to the Court that Ray E. Levers died on or about October 1, 1941, in the State of New Mexico, and that at the time of his death was a resident of Roswell, Chaves County, New Mexico, and left an estate in said county and state consisting of real and personal property and particularly a partnership interest in the co-partnership known as Levers Brothers his interest therein being of the net approximate value of Twenty Two Thousand Five Hundred (\$22,500.00) Dollars, and that the said decedent died intestate, and that it is proper that Oran C. Dale be appointed co-administrator with F. E. Levers to administer the partnership assets of the decedent, the said F. E. Levers having heretofore on October 7, 1941, been by this court appointed as special administrator and administrator of the partnership estate of Levers Brothers, and the Court being fully advised,

It is hereby ordered by the Court that Oran C. Dale be and he hereby is appointed co-administrator with F. E. Levers to administer the partnership assets of the decedent, Ray E. Levers, and that special letters of administration and co-administrator of the partnership assets of the decedent
309 issue the said Oran C. Dale upon his posting a good and sufficient bond in the penal sum of Twenty Five

Thousand (\$25,000.00) Dollars, and upon his taking the oath as required by law.

Dated this 10th day of October, 1941.

LUCIUS DILLS, Probate Judge.

(Endorsement) State of New Mexico, County of Chaves. Filed in my office Oct. 10, 1941. D. P. Greiner, Clerk, by Ruth S. Baskin, Deputy. (Official Seal)

Recorded in Book 19; Page 41.

Verified as an exact copy of Order, appointing Co-Administrator, executed October 10, 1941, as part of the basic permit file No. 13-P-37 for Levers Brothers.

January 6, 1944.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Exhibit 36.

No. 1911.

Letters of Co-Administration of Partnership Assets.

State of New Mexico, County of Chaves, ss:

In Probate Court.

To All to Whom These Presents Shall Come, Greeting:

310 Know Ye, That Whereas, Ray E. Levers, late of the said ~~County of Chaves~~, died intestate, as it is said, having at the time of his death property in this State which may be lost, destroyed or diminished in value, if speedy care be not taken of the same; to the end therefore, that said property may be collected, preserved and disposed of according to law, we do hereby constitute and appoint F. E. Levers and Oran C. Dale, of said County Co-Administrators of Partnership Assets of all and singular the goods and chattels, rights and credits, which were of the said Ray E. Levers, at the time of his death, with full power and authority to secure and dispose of said property according to law, and collect all moneys due said deceased, and in general to do and perform all other acts and things which are, or hereafter may be, required of

them by law or the decree or order of any court having jurisdiction.

In Testimony Whereof, I Lucius Dills, Judge of the Probate Court, in and for said County, do hereunto set my hand and affix the seal of said Court, this 15th day of October, A. D., 1941.

LUCIUS DILLS, Probate Judge.

January 6, 1944.

Attest:

D. P. GREINER, Clerk of the Probate Court,
By Jo SCHRIMSHER, Deputy.

(Official Seal)

Verified as an exact copy of Letters of Co-Administration of Partnership Assets executed October 10, 1941 as part of the basic permit file No. 13-P-37 for Levers Brothers.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Exhibit 30.

Form 1633
Treasury Department
Internal Revenue Service
July 1940

Permit No. 13-P-37

Wholesaler's Basic Permit

(Under the Federal Alcohol Administration Act
and Regulations)

Levers Brothers (Forest E. Levers and Oran C. Dale, dba)
209 East Second Street, Roswell, New Mexico

311 Pursuant to application dated October 28, 1941, you are hereby authorized and permitted to engage, at the above address and at branch offices and other places of business, in the business of purchasing for resale at wholesale distilled spirits, wine, and malt beverages, and, while so engaged, to sell, offer and deliver for sale, contract to sell and ship, in interstate and foreign commerce, the alcoholic beverages so purchased.

This permit is conditioned upon compliance by you with Sections 5 and 6 of the Federal Alcohol Administration Act and all other provisions thereof; the Twenty-first Amendment and laws relating to the enforcement thereof; all laws of the United States relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto; all applicable regulations made pursuant to law which are now, or may hereafter be, in force; and the laws of all States in which you engage in business.

This basic permit is effective from the date hereof and will remain in force until suspended, revoked, annulled, voluntarily surrendered, or automatically terminated, as provided by law and regulations.

This Permit Is Not Transferable.

A. V. ANDERSON,
District Supervisor. hd

Dated December 26, 1941

Verified as an exact copy of Wholesaler's Basic Permit, Form 1633, issued on December 26, 1941, as part of the basic permit file No. 13-P-37 for Levers Brothers.

January 6, 1944

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Exhibit 42.

*13-P-66

Form 1632
Treasury Department
Internal Revenue Service
(Rev. January 1941)

Application for Wholesaler's Basic Permit Under
the Federal Alcohol Administration Act

To District Supervisor, Thirteenth District, Denver, Colorado.

252 The undersigned Forest E. Levers, Co-partner;
Forest E. Levers, Special Administrator of Levers
Brothers, d.b.a. Levers Brothers with principal office at 209

*Appears in ink on original.

East Second Street, Roswell, New Mexico hereby makes application for a basic permit to engage in the business of purchasing for resale at wholesale the following classes of alcoholic beverages:

Distilled Spirits, Wine and Malt Beverages
(Specify whether distilled spirits, wine, or malt beverages)

and in receiving, selling, and shipping, in interstate and foreign commerce, the alcoholic beverages so purchased.

The applicant agrees that he will operate in conformity with the Federal Alcohol Administration Act and amendments thereto; the Twenty-first Amendment and laws relating to the enforcement thereof; with all other laws of the United States relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto; and all applicable regulations made pursuant to law which are now, or may hereafter be, in force; and the laws of all States in which he engages in business.

All data, written statements, affidavits, evidence, or other documents submitted in support hereof, or upon hearing hereon, shall be deemed to be a part of this application.

FOREST E. LEVERS, Co-Partner
FOREST E. LEVERS, Spec. Administrator

Subscribed and sworn to before me this 29th day of November, 1943. W. L. Lile, Notary Public. My Commission Expires: January 21, 1946. (Seal).

January 14, 1944.

Verified as one of the copies of application Form 1632, original executed November 29, 1943, now a part of the pending permit File 13-P-66 for Levers Brothers.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

(See instructions on reverse side)

253 [Instructions not printed here since they appear at printed page 155.]

Exhibit 43.

Application for Basic Permit

1. Name and Address of Applicant and—

254 A. Forest E. Levers Co-partner; Forest E. Levers
Special Adm. of Levers Brothers, d.b.a. Levers Brothers,
209 East 2nd Street, Roswell, New Mexico.

Warehouse—Same

B. State whether applicant's place of business is owned or leased by him. If leased, give the date of the lease, the duration thereof, the name and address of the owner, and the amount of monthly or annual rental:

Owned

C. State whether applicant is an individual, partnership, or corporation. If a partnership, state the names and addresses of all partners. If individual or partnership, state trade name, if any. If a corporation, state the date of incorporation, the State in which incorporated, the amount of authorized capital, the amount of paid-in capital, the names and addresses of all stockholders who hold 10 percent or more of the capital stock, including the number of shares held or subscribed for by each:

Forest E. Levers, Special Adm., and Forest E. Levers, Co-partner of Levers Brothers, d.b.a. Levers Brothers, 209 East 2nd Street, Roswell, New Mexico.

D. State the source of the funds invested in the business, the names and addresses of all persons who hold, or who are expected to hold, a substantial financial interest in the enterprise, and the amount of their interest; and state the names and addresses of all persons other than those covered by paragraph C above, who have advanced by loan, or otherwise, more than 10 percent of the capital invested in the business:

The business is a continuation of the co-partnership, formerly composed of Forest E. Levers and Ray E. Levers, deceased. This application being filed in accordance with regulation No. 1 to obtain a new permit as the result of the termination of the partnership by reason of the death of Ray E. Levers, deceased, and

the resignation and discharge of Oran C. Dale as Co-Adm. who resigned for the fact that he was drafted into the U. S. Army. See copy discharge attached hereto and made a part hereof:

E. State whether the business is a new enterprise or whether acquired from the holder of a wholesaler's basic permit under the Federal Alcohol Administration Act. If acquired from a permit holder, furnish the name and address of such permit holder and the number of his permit, if available:

A continuation of the co-partnership of Forest E. Levers and Ray E. Levers, deceased, Forest E. Levers individual, Forest E. Levers Spec. Adm. Co-partnership having been operated under Basic Permit No. 13-P-37.

2. Branch Offices:

List addresses of branch offices, if any, furnishing also names of branches if operated under trade names differing from name in which application is filed:

Hobbs, New Mexico, operated under name of Levers Brothers.

3. Business History:

255 A. State whether applicant, partner, or any officer, director, or principal stockholder, or firm member of the applicant ever applied for, held, or was connected with a Federal permit to manufacture, distribute, or use alcoholic beverages or industrial alcohol; if so, furnish the number and classification of such permit, the period of operation thereunder; and state whether such permit was ever suspended or revoked, giving details:

Never have applied for Basic Permits, except Wholesalers' permits which we have operated under in the past and now operating, same being Basic Permit Nos. P-8482 and 13-P-37.

B. State, giving details, whether the applicant, or any person referred to in paragraph A above, has, (1) within 5 years prior to date of application, been convicted of a felony under Federal or State Law, or (2) within 3 years prior to

date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof, or (3) ever been arrested and charged with any violation of a State or Federal law relating to liquor:

The answer to (1) and (2) under "B" is No. Have never been convicted of a felony under Federal or State law. (3) We were indicted for violation of Federal law but indictment was dismissed and compromise was made. This compromise is now fully paid.

C. State the business experience of the applicant and that of all persons named in paragraph A, giving in detail, experience, if any, pertaining to the manufacture or distribution of intoxicating liquors:

Have been in the Wholesale business since the Fall of 1933, doing business as Levers Brothers.

D. Furnish the names and addresses of at least five business references, including one bank reference, and briefly state the nature and extent of business relations with each; also state whether the applicant is rated by any commercial agency, and if so, give the name of such agency and the details of the rating:

Sylvester P. Johnson, of Roswell, N. M., with whom we have had relations in the R. E. business since 1910 in a large way. Harry Puryear, Roswell, N. M., at present Justice of the Peace, generally dealing in the automobile and machine business in a small way. W. E. Bondurant, Roswell, N. M., dealing in hay, cotton, and road contracting business since 1930 in a small way. First National Bank of Roswell, N. M., with whom we have done business since 1908. Cecil Naramore, Continental Oil Co. Agent, Roswell, N. M., from whom we purchase supplies.

E. State whether applicant, either directly or indirectly, has actual or legal control over any other corporation, or is actually or legally controlled by any other corporation, whether such control is effected through stock ownership or in any other manner; and if so, state the extent and manner of such control, the name and address of such corporation, or corporations, together with the names and addresses of the officers, and directors of each corporation:

Have no connection with any Corporation, directly or indirectly.

F. State whether applicant, or any of its officers, directors, principal stockholders, or any other person holding, or expected to hold, a substantial financial interest in the enterprise, holds any interest in any premises on which distilled spirits, wine, or malt beverages are sold at retail. If so, give particulars, including date such interest was acquired.

Do not hold any interest in any retail outlets.

256 G. List the names of manufacturers or distributors of distilled spirits, wine, or malt beverages who have *designated* the applicant as their distributing agent and specify the territory covered by such designation:

Schenley Distillers Corp., New York, N. Y., for S. E. part of New Mexico. Blatz Brewing Co., Milwaukee, Wis., for S. E. part of New Mexico. Galveston Houston Breweries, Inc., Galveston, Texas, for S. E. part of New Mexico.

H. State whether applicant has his own sales organization. If so, *specify* nature and extent thereof:

We have our own sales organization and cover all territory represented by us.

I. State whether applicant is now engaged in the business covered by this application. If so, furnish approximate date applicant commenced the actual purchase and sale at wholesale of alcoholic beverages:

We are now engaged in business, doing business as Levers Brothers, operating under Federal Basic Permit No. 13-P-37.

J. State whether the applicant proposes to sell at whole-sale distilled spirits, wine and/or malt beverages and estimate the percentage of the applicant's business which will be in each class of liquors:

We *sell* distilled spirits, wine, and malt beverages, and in the past the percentage of distilled spirits has run approximately 60% of our total sales; malt beverages 35%; wine 5%.

K. State whether applicant proposes to sell at wholesale to wholesalers and retailers; or whether applicant proposes to sell at retail—to consumers only:

We are selling to Retailers principally.

4. State and Federal Laws:

A. Furnish the number, or numbers, of license, or licenses, to engage in the sale at wholesale of alcoholic beverages issued to the applicant by the State in which his place of business is located. State specifically whether such license, or licenses, cover the sale of any one, or two, or all of the following classes of liquors: (1) Distilled spirits, (2) wine, and (3) malt beverages:

Two State Licenses: Roswell, No. 96; Hobbs, No. 97.
Two Federal Occupational Stamps: Roswell, WLD 145594, RLD 3744. Hobbs, WMLD 6956, RMLD 69284.
Above licenses cover the sale of distilled spirits, wine and beer.

5. Powers:

257 If applicant is a corporation, set forth a copy of the powers of the corporation as stated in its articles of incorporation. If applicant is a corporation, the application shall also be accompanied by a certified copy of the by-laws or resolutions of the board of directors, authorizing an officer or officers to execute the application on behalf of the corporation:

Not incorporated.

FOREST E. LEVERS, Individual
FOREST E. LEVERS, Special Adm. of Ray E.
Levers, Deceased.

State of New Mexico, County of Chaves, ss.

Sworn to before me this 29th day of November 1943.
W. L. Lile, Notary Public. My Commission Expires: January 21, 1946. (Seal).

January 14, 1944

Verified as one of the copies of the sworn statement supporting the application of Form 1632 which was executed by Forest E. Levers and also by Forest E. Levers, Special Ad-

ministrator, now a part of the pending permit File 13-P-66 for Levers Brothers.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Exhibit 44.

Clerk's Certificate

State of New Mexico, County of Chaves, ss:

258 I, John C. Peck, Clerk of the Probate Court in and for the County of Chaves and State of New Mexico, do hereby certify that the annexed copy of.

Order in the Matter of the Estate of Ray E. Levers, Deceased, Cause No. 1911

is a true and literal exemplification of the record in my said office.

Witness my hand and the seal of my said office this the 29th day of November, A. D., 1943.

JOHN C. PECK, Clerk of the Probate Court,
By CATHERINE GREENING, Deputy.

(Seal)

January 14, 1944.

Verified as one of the copies of Clerk's Certificate executed November 29, 1943, supporting the application on Form 1632 executed November 29, 1943 as part of the pending permit file 13-P-66 and Levers Brothers.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

—In the Probate Court of Chaves County
State of New Mexico.

In the Matter of the Estate of Ray E. Levers, Deceased,
No. 1911.

Order.

259 The above entitled cause came on for hearing before the Court upon the request of Oran C. Dale to be relieved as co-administrator in the above entitled estate and it appearing that the said Oran C. Dale has been inducted in the United States Army and that he has been ordered to report for duty on the 29th day of November, 1943, and that the said Forest E. Levers has consented that the said Oran C. Dale be relieved of the obligation as co-administrator and that as shown by the files herein all of the assets of the said estate are now in the hands of and are to remain in the hands of the administrator, Forest E. Levers, and the Court being therefore advised;

It is Therefore Ordered By the Court that Oran C. Dale be and he hereby is relieved as co-administrator of the estate of Ray E. Levers, deceased, in the above numbered estate

It Is Further Ordered By the Court that the said Oran C. Dale be and he hereby is discharged as co-administrator.

LUCIUS DILLS, Probate Judge.

(Endorsement) State of New Mexico, County of Chaves.
Filed in my office Nov. 15, 1943. John C. Peck, Clerk, by
Catherine Greening, Deputy. Recorded in Book 19, Page 488.

(Official Seal)

Exhibit 5.

Registered No. 205349

December 18, 1943.

AT-L:JAH

Mr. Forest E. Levers, Co-Partner; Mr. Forest E. Levers,
Special Administrator of Levers Brothers, DBA: Levers
Brothers, 209 East Second Street, Roswell, New Mexico.

Dear Mr. Levers:

Docket No. FA-7

260 In the matter of notice of contemplated denial of
Permit, under the Federal Alcohol Administration
Act, under No. 13-P-66, re Form 1632, Application for
Wholesaler's Basic Permit, under the Federal Alcohol Ad-
ministration Act, executed November 29, 1943.

This office has had under consideration your application
on Form 1632, executed November 29, 1943, for Wholesaler's
Basic Permit, under the Federal Alcohol Administration
Act, for the resale at wholesale of distilled spirits, wine, and
malt beverages.

The law in Section 4 (a) (2) of the Federal Alcohol Ad-
ministration Act of August 29, 1935, as supplemented by
Reorganization Plan No. III (House Document No. 681,
Seventy-sixth Congress) and Treasury Decisions 4974 of
June 12, 1940, 4982 effective July 26, 1940, and 5039 effective
February 28, 1941, specifying conditions under which the
District Supervisor would deny an application for a basic
permit, is in substance as follows:

Upon the finding "(A) that such person (or in case of a
corporation, any of its officers, directors, or principal stock-
holders) has, within five years prior to date of application,
been convicted of a felony under Federal or State law or
has, within three years prior to date of application, been
convicted of a misdemeanor under any Federal law relating
to liquor, including the taxation thereof; or (B) that such
person is, by reason of his business experience, financial
standing or trade connections, not likely to commence opera-
tions within a reasonable period or to maintain such op-
erations in conformity with Federal law; or (C) that the

operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted."

261. In view of the matters shown above, notice is hereby given that the District Supervisor contemplates taking the action of denial of the application. There are pending at this time annulment proceedings relating to Permit 13-P-37, under which the business of Levers Brothers, at 209 East Second Street, Roswell, New Mexico, has carried on since December 26, 1941. The evidence that the Alcohol Tax Unit has concerning the way in which certain phases of the business has been carried on is persuasive that the business proposed to be carried on pursuant to the application that is the subject of this communication would not be maintained in conformity with federal law and regulations. It is considered proper to take the action of denial of the permit.

Under the law and regulations it is your privilege to make written application within fifteen (15) days for a hearing in which you would undertake to establish that, under the law, you are entitled to the permit for which application was filed on Form 1632, executed November 29, 1943.

Very truly yours

A. V. ANDERSON,
District Supervisor.

jm
By registered mail.

Exhibit 45.

Form 1630
Treasury Department
Internal Revenue Service
(Rev. January 1941)

13-I-12

Application for Importer's Basic Permit Under the
Federal Alcohol Administration Act

To District Supervisor, Thirteenth District, Denver, Colorado

266 The undersigned Forest E. Levers, Co-partner;
Forest E. Levers, Special Administrator of Levers

Brothers, d.b.a. Levers Brothers with principal office at 209 East Second Street, Roswell, New Mexico hereby makes application for a basic permit to engage in the business of importing into the United States, the following classes of alcoholic beverages:

Distilled Spirits, Wine, and Malt Beverages
(Specify whether distilled spirits, wine, or malt beverages)

and in selling and shipping, in interstate and foreign commerce, the alcoholic beverages so imported.

The applicant agrees that he will operate in conformity with the Federal Alcohol Administration Act and amendments thereto; the Twenty-first Amendment and laws relating to the enforcement thereof; with all other laws of the United States relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto; and all applicable regulations made pursuant to law which are now, or may hereafter be, in force; and the laws of all States in which he engages in business.

All data, written statements, affidavits, evidence, or other documents submitted in support hereof, or upon hearing hereon, shall be deemed to be a part of this application.

FOREST E. LEVERS, Co-Partner
FOREST E. LEVERS,
Spec. Administrator

January 14, 1944.

Verified as one of the copies of application Form 1630, original executed November 29, 1943, now a part of the pending permit File 13-I-12; for Levers Brothers.

Subscribed and sworn to before me this 29th day of November 1943. W. L. Lile, Notary Public. My Commission Expires: January 21, 1946. (Seal).

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

(See instructions on reverse side)

[On reverse.]

Instructions

267 An application for an importer's basic permit under the Federal Alcohol Administration Act must be filed with the District Supervisor on Form 1630. In the case of importers maintaining branch offices or places of business the application must be filed with the District Supervisor of the district wherein the applicant has his main office or place of business.

The application must be filed by the individual partnership, joint stock company, business trust, association, corporation, or other form of business enterprise, receiver, trustee, or liquidating agent, which will actually operate the business. Applications may not be filed by parent corporations covering establishments proposed to be operated by affiliates. A separate application must be filed by each affiliate.

An application for an importer's basic permit must be executed in duplicate, and must be accompanied by a separate sworn statement, also in duplicate, embodying the following information with respect to the specific business covered by the application.

1. Name and Address of Applicant and—

A. State whether applicant is an individual, partnership, or corporation. If a partnership, state the names and addresses of all partners. If individual or partnership, state trade name, if any. If a corporation, state the date of incorporation, the State in which incorporated, the amount of authorized capital, the amount of paid-in capital, the names and addresses of the officers and directors, and the names and addresses of all stockholders who hold 10 percent or more of the capital stock, including the number of shares held by each.

B. State the source of the funds invested in the business, the names and addresses of all persons who hold, or who are expected to hold, a substantial financial interest in the enterprise, and the amount of their interest; and state the names and addresses of all persons other than those covered by paragraph A above who have advanced by loan, or other-

wise, more than 10 percent of the capital invested in the business.

C. State whether applicant proposes to make direct importations in his own name, or whether part of such business will be in the solicitation of orders from trade buyers, who are permit holders, or whether any part of such business will consist of soliciting orders from consumer buyers for their own consumption and not for resale.

2. Branch Offices:

List addresses of branch offices, if any, furnishing also names of branches if operated under trade names differing from name in which application is filed.

3. Business History:

A. State whether applicant, partner, or any officer, director, or principal stockholder, or firm member of the applicant ever applied for, held, or was connected with a Federal permit to manufacture, distribute, or use alcoholic beverages or industrial alcohol; if so, furnish the number and classification of such permit, the period of operation thereunder, and state whether such permit was ever suspended or revoked, giving details.

B. State, giving details, whether the applicant, or any person referred to in paragraph A above, has, (1) within 5 years prior to date of application, been convicted of a felony under Federal or State law, or (2) within 3 years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof, or (3) ever been arrested and charged with any violation of a State or Federal law relating to liquor.

C. State the business experience of the applicant and that of all persons named in paragraph A, giving in detail, experience, if any, pertaining to the manufacture or distribution of intoxicating liquors.

D. Furnish the names and addresses of at least five business references, including one bank reference, and briefly state the nature and extent of business relations with each; also state whether the applicant is rated by any commercial

agency, and if so, give the name of such agency and the details of the rating.

E. State whether applicant, either directly or indirectly, has actual or legal control over any other corporation, or is actually or legally controlled by any other corporation, whether such control is effected through stock ownership or in any other manner; and if so, state the extent and manner of such control, the name and address of such corporation, or corporations, together with the names and addresses of the officers, and directors of each such corporation.

F. State whether applicant, or any of its officers, directors, principal stockholders, or any other person holding, or expected to hold, a substantial financial interest in the enterprise, holds any interest in any premises on which distilled spirits, wine, or malt beverages are sold at retail. If so, give particulars, including date such interest was acquired.

G. Specify kinds of liquors which applicant proposes to import, such as distilled spirits, wine, or malt beverages.

H. State whether applicant proposes to sell to the wholesale trade or the retail trade, and which class will constitute the principal outlet. Also, state whether applicant (1) has his own sales organization (if so, specify nature and extent thereof), or (2), has contracted with any person, or persons, to act as his distributor (if so, give names and addresses).

I. State the names and addresses of the foreign alcoholic beverage manufacturers or distributors, if any, who have designated the applicant, by contract, as their representative; and describe the territory included in such designation.

J. State to what extent, if any, applicant will sell for the foreign exporter on a commission basis, and whether the shipments so sold will be billed to the domestic customer on a basis whereby the customer is charged with the customs clearance.

K. Give any additional explanation or details pertinent to the application, including facts indicating the potential volume of importations, and the applicant's financial and commercial ability to carry on such business.

4. State and Federal Laws:

A. Furnish the number, or numbers, of license, or licenses, to engage in the sale at wholesale of alcoholic beverages issued to the applicant by the State in which his place of business is located. State specifically whether such license, or licenses, cover the sale of any one, or two, or all of the following classes of liquors: (1) Distilled spirits, (2) wine, and (3) malt beverages.

B. State whether the applicant has procured from the Collector of Internal Revenue, occupational tax stamps as a wholesale liquor dealer, or wholesale malt liquor dealer, and furnish the number of such stamps.

5. Powers:

If applicant is a corporation, set forth a copy of the powers of the corporation as stated in its articles of incorporation. If applicant is a corporation, the application shall also be accompanied by a certified copy of the by-laws or resolutions of the board of directors, authorizing an officer or officers to execute the application on behalf of the incorporation.

Exhibit 46.

Application for Importer's Basic Permit

1. Name and Address of Applicant and—

Forest E. Levers, Co-partner; Forest E. Levers, Special Adm. of Levers Brothers, d.b.a. Levers Brothers, 209 East 2nd St., Roswell, N. M.

Warehouse—Same.

268

A. State whether applicant is an individual, partnership, or corporation. If a partnership, state the names and addresses of all partners. If individual or partnership, state trade name, if any. If a corporation, state the date of incorporation, the State in which incorporated, the amount of authorized capital, the amount of paid-in capital, the names and addresses of the officers and directors, and the names and addresses of all stockholders who hold 10 percent or more of the capital stock, including the number of shares held by each.

Forest E. Levers, Co-partner; Forest E. Levers, Spec. Adm. d.b.a. as Levers Brothers, Roswell, N. M.

B. State the source of the funds invested in the business, the names and addresses of all persons who hold, or who are expected to hold, a substantial financial interest in the enterprise, and the amount of their interest; and state the names and addresses of all persons other than those covered by paragraph A above who have advanced by loan, or otherwise, more than 10 percent of the capital invested in the business.

The business is a continuation of the co-partnership formerly composed of Forest E. Levers and Ray E. Levers, deceased. This application being filed in accordance with Reg. No. 1 to obtain an Importers' Basic Permit.

C. State whether applicant proposes to make direct importations in his own name, or whether part of such business will be in the solicitation of orders from trade buyers, who are permit holders, or whether any part of such business will consist of soliciting orders from consumer buyers for their own consumption and not for resale.

To make direct importations in our own name.

2. Branch Offices:

List addresses of branch offices, if any, furnishing also names of branches of operated under trade names differing from name in which application is filed.

Hobbs, New Mexico, operated under trade name of Levers Brothers.

3. Business History:

269 A. State whether applicant, partner, or any officer, director, or principal stockholder, or firm member of the applicant ever applied for, held, or was connected with a Federal permit to manufacture, distribute, or use alcoholic beverages or industrial alcohol; if so, furnish the number and classification of such permit, the period of operation thereunder, and state whether such permit was ever suspended or revoked, giving details.

Never applied for an Importers Permit, but do hold Wholesalers Basic Permit No. 13-P-37.

B. State, giving details, whether the applicant, or any person referred to in paragraph A above, has, (1) within 5 years prior to date of application, been convicted of a felony under Federal or State law, or (2) within 3 years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof, or (3) ever been arrested and charged with any violation of a State law relating to liquor.

The answer to (1) and (2) under "B" is No. Have never been convicted of a felony under Federal or State law. (3) We were indicted for violation of Federal law but indictment was dismissed and compromise settlement was made, which has been paid in full.

C. State the business experiences of the applicant and that of all persons named in paragraph A, giving in detail, experience, if any, pertaining to the manufacture or distribution of intoxicating liquors.

Have been in the wholesale liquor business since the Fall of 1933, d.b.a: Levers Brothers.

D. Furnish the names and addresses of at least five business references, including one bank reference, and briefly state the nature and extent of business relations with each; also state whether the applicant is rated by any commercial agency, and if so, give the name of such agency and the details of the rating.

Sylvester P. Johnson, Roswell, N. M., with whom we have had business relations in R. E. business since 1910 in a large way; Harry Puryear, Justice of the Peace, Roswell, N. M., general dealing in automobile and machine business since 1910 in a small way; W. E. Bondurant, Roswell, N. M. in hay, cotton, and road contracting business since 1930 in a small way; Cecil Narmore, Continental Oil Co. Agent, Roswell, N. M., from whom we buy merchandise; First National Bank, Roswell, N. M., with whom we have done business since 1908.

E. State whether applicant, either directly or indirectly, has actual or legal control over any other

corporation, or is actually or legally controlled by any other corporation, whether such control is effected through stock ownership or in any other manner; and if so, state the extent and manner of such control, the name and address of such corporation, or corporations, together with the names and addresses of the officers, and directors of each such corporation.

Have no connection with any Corporation, directly or indirectly.

F. State whether applicant, or any of its officers, directors, principal stockholders, or any other person holding, or expected to hold, a substantial financial interest in the enterprise, holds any interest in any premises on which distilled spirits, wine, or malt beverages are sold at retail. If so, give particulars, including date such interest was acquired.

Do not hold any interest in any Retail Outlets.

G. Specify kinds of liquors which applicant proposes to import, such as distilled spirits, wine, or malt beverages.

Distilled Spirits, Wine and Malt Beverages and Cordials.

H. State whether applicant proposes to sell to the wholesale trade or the retail trade, and which class will constitute the principal outlet. Also, state whether applicant (1) has his own sales organization (if so, specify nature and extent thereof, or (2), has contracted with any person, or persons, to act as his distributor (if so, give names and addresses).

We sell to Retailers principally; (1) have our own sales organization, consisting of two salesmen or more; (2) have not contracted with any person or persons to act as Distributor.

271. I. State the names and addresses of the foreign alcoholic beverage manufacturers or distributors, if any, who have designated the applicant, by contract, as their representative; and describe the territory included in such designation.

Have not made any connections as yet.

J. State to what extent, if any, applicant will sell for

the foreign exporter on a commission basis, and whether the shipments so sold will be billed to the domestic customer on a basis whereby the customer is charged with the customs clearance.

We intend to purchase direct.

K. Give any additional explanation or details pertinent to the application, including facts indicating the potential volume of importations, and the applicant's financial and commercial ability to carry on such business.

We intend to import 1500 cases fifths or more per year of distilled spirits. Levers Brothers have been in the wholesale business since the Fall of 1933 and are financially able to meet any commitment we might make.

4. State and Federal Laws:

A. Furnish the number, or numbers, of license, or licenses, to engage in the sale at wholesale of alcoholic beverages issued to the applicant by the State in which his place of business is located. State specifically whether such license, or licenses, cover the sale of any one, or two, or all of the following classes of liquors: (1) Distilled spirits, (2) wine, and (3) malt beverages.

Two State Licenses: Roswell, N. M., No. 96; Hobbs, N. M., No. 97. Two Federal Occupational Stamps: Roswell, N. M., WLD 145594, RLD 3744; Hobbs, N. M., WMLD 6956, RMLD 69284.

Above licenses cover sale of distilled spirits, wine and beer.

272 B. State whether the applicant has procured from the Collector of Internal Revenue, occupational tax stamps as a wholesale liquor dealer, or wholesale malt liquor dealer, and furnish the number of such stamps.

Yes. Roswell, N. M., WLD 145594; Hobbs, N. M. WMLD 6956.

5. Powers:

If applicant is a corporation, set forth a copy of the powers of the corporation as stated in its articles of incorporation. If applicant is a corporation, the application

shall also be accompanied by a certified copy of the by-laws or resolutions of the board of directors, authorizing an officer or officers to execute the application on behalf of the corporation.

Not incorporated.

FOREST E. LEVERS, Individually
FOREST E. LEVERS, Spec. Adm. of
Ray E. Levers, Deceased

State of New Mexico, County of Chaves, ss.

Sworn to before me this 29th day of November, 1943.
W. L. Lile, Notary Public. My Commission Expires: January 21, 1946. (Seal).

January 14, 1944

Verified as one of the copies of the sworn statement supporting the application on Form 1630 which was executed by Forest E. Levers, and also by Forest E. Levers, Special Administrator, now part of the pending permit file 13-I-12 for Levers Brothers.

HAZEL DILLINGHAM, Permit Clerk,
BULA M. OLIVER, FAA Permit Clerk.

Exhibit 7.

Registered No. 255348

2

December 18, 1943.

ATL:JAH

Mr. Forest E. Levers, Co-Partner; Mr. Forest E. Levers, Special Administrator of Levers Brothers, DBA: Levers Brothers, 209 East Second Street, Roswell, New Mexico.

Dear Mr. Levers:

Docket No. FA-8

273 In the matter of notice of contemplated denial of Permit, under the Federal Alcohol Administration Act, under No. 13-I-12, re Form 1630, Application for Importer's Basic Permit, under the Federal Alcohol Administration Act, executed November 29, 1943.

This office has had under consideration your application on Form 1630, executed November 29, 1943, for Importer's Basic Permit, under the Federal Alcohol Administration Act, for engaging in the business of importing into the United States distilled spirits, wine, and malt beverages.

The law in Section 4 (a) (2) of the Federal Alcohol Administration Act of August 29, 1935, as supplemented by Reorganization Plan No. III (House Document No. 681, Seventy-sixth Congress) and Treasury Decisions 4974 of June 12, 1940, 4982 effective July 26, 1940, and 5039 effective February 28, 1941, specifying conditions under which the District Supervisor would deny an application for a basic permit, is in substance as follows:

Upon the finding "(A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted."

274 In view of the matters shown above, notice is hereby given that the District Supervisor contemplates taking the action of denial of the application. There are pending at this time annulment proceedings relating to Permit 13-P-37, under which the business of Levers Brothers, at 209 East Second Street, Roswell, New Mexico, has carried on since December 26, 1941. The evidence that the Alcohol Tax Unit has concerning the way in which certain phases of the business has been carried on is persuasive that the business proposed to be carried on pursuant to the application that is the subject of this communication would not be maintained in conformity with federal law and regulations. It is considered proper to take the action of denial of the permit.

Under the law and regulations it is your privilege to make written application within fifteen (15) days for a hearing in which you would undertake to establish that, under the law, you are entitled to the permit for which application was filed on Form 1630, executed November 29, 1943.

Very truly yours

A. V. ANDERSON,
District Supervisor.

jm

By registered mail.

Exhibit 13.

Branch Warehouses at
Hobbs, New Mexico and
Clovis, New Mexico

Federal Basic
Permit No. 13-P-37
State License No. 41

Levers Brothers

Wholesale Beer, Wine and Liquors.

Roswell, New Mexico, January 1, 1944.

Mr. A. V. Anderson, District Supervisor, Alcohol Tax Unit,
Internal Revenue Service, Denver 2, Colorado.

Dear Mr. Anderson:

Docket No. FA-7.

265 In the matter of notice of contemplated denial of
Permit, under the Federal Alcohol Administration Act,
under No. 13-P-66, re Form 1632, Application for Whole-
saler's Basic Permit, under the Federal Alcohol Adminis-
tration Act, executed November 29, 1943

I wish hereby to make application for a hearing in the
above matter.

I wish also to request a statement of the grounds on
which denial of the above mentioned application is based.

This information is necessary to enable me to prepare my defense.

Yours very truly,

LEVERS BROTHERS,
FOREST E. LEVERS,
Special Administrator.

FEL/vaj

Copy to A.S.E.
Registered 5490.

Exhibit 14.

Branch Warehouses at
Hobbs, New Mexico and
Clovis, New Mexico

Federal Basic
Permit No. 13-P-37
State License No. 41

Levers Brothers

Wholesale Beer, Wine and Liquors.

Roswell, New Mexico, January 1, 1944.

Mr. A. V. Anderson, District Supervisor, Alcohol Tax Unit,
Internal Revenue Service, Denver 2, Colorado.

Dear Mr. Anderson:

Docket No. FA-8.

278 In the matter of notice of contemplated denial of
Permit, under the Federal Alcohol Administration
Act, under No. 13-I-12, re form 1630, Application for Im-
porter's Basic Permit, under the Federal Alcohol Adminis-
tration Act, executed November 29, 1943.

I wish hereby to make application for a hearing in the
above matter.

I wish also to request a statement on the grounds on which
denial of the above mentioned application is based. This
information is necessary to enable me to prepare my defense.

Yours very truly,

LEVERS BROTHERS,
FOREST E. LEVERS,
Special Administrator.

FEL/vaj

Copy to A.S.E.

Branch Warehouses at
Hobbs, New Mexico and
Clovis, New Mexico.

Federal Basic
Permit No. 13-P-37
State License No. 41

Levers Brothers

Wholesale Beer, Wine and Liquors.

Air Mail

Roswell, New Mexico, January 1, 1944.

Mr. A. V. Anderson, District Supervisor, Alcohol Tax Unit,
Internal Revenue Service, Denver 2, Colorado.

279-A Dear Mr. Anderson: I have just mailed you letters requesting hearings on the denial of the permits for which I applied on November 29, 1943. I am writing this letter to get some information.

I am afraid I am getting beyond my depth in all these matters and think I should engage counsel to assist me. I wish to engage Mr. Jas. J. McNamara of Clovis, New Mexico. He tells me he is not admitted to practice before the Treasury Department. Will he be permitted to appear with me at the hearing in Albuquerque on January 19th and help me there? I understand other branches of the Treasury Department permit lawyers, not admitted to practice, to appear if they are accompanied by their clients, but that the lawyer cannot appear alone. If he cannot represent me under these circumstances, can I have the hearing postponed until Mr. McNamara is admitted to practice provided he makes prompt application for such admission?

Also, do I have to file any papers in the nature of an answer or reply in the matter before Mr. Fahy?

Please let me hear from you.

Yours very truly,

LEVERS BROTHERS,
FOREST E. LEVERS,
Special Administrator.

FEL/vaj
Copy to A.S.E.

January 6, 1944.

AT LAJAH

Mr. Forest E. Levers, Co-Partner; Mr. Forest E. Levers, Special Administrator of Levers Brothers, DBA: Levers Brothers, 209 East Second Street, Roswell, New Mexico.

283 Dear Mr. Levers: This office is in receipt of your letter of January 1, 1944, in which you advise that you wish to engage Mr. Jas. J. McNamara, of Clovis, New Mexico, to assist you in the hearing scheduled for 2:00 P.M., January 19, 1944, in Albuquerque, New Mexico, concerning permit matters under the Federal Alcohol Administration Act, Docket No. FA-6 re Permit No. 13-P-37; FA-7 re Application 13-P-66; and Docket No. FA-8 re Application 13-I-12.

You state that Mr. McNamara is not at the present time admitted to practice before the Treasury Department; but you indicate that he will write at once to the Committee on Practice, Treasury Department, Washington, D. C., requesting Form 23, in triplicate, and that he will use these forms when received and file application according to instructions thereon.

If Mr. McNamara has never been refused admission to practice before the Treasury Department and is a member of the bar engaged in practice in New Mexico; and if he takes the steps mentioned in the preceding paragraph as to communication with the Committee on Practice—he may appear with you in the matters relating to the permit of Levers Brothers and the pending applications. Mr. McNamara should bring a letter covering these particulars, addressed to District Supervisor, Alcohol Tax Unit, 535 Symes Building, Denver 2, Colorado, and present the same at the opening of the hearing, to become a part of the record of the case.

In reference to filing papers, since you have indicated by your letters of January 1, 1944, that you desire to be heard with reference to the pending applications on Forms 1630 and 1632 for Importer's Basic Permit and Whole-283-A saler's Basic Permit, respectively, it will not be necessary that you file any other document in the nature

of formal answers. At the hearing it will be your privilege to present oral testimony of witnesses, or to offer documentary evidence for the record with respect to the two pending applications. Also with respect to the part of the hearing that will be devoted to annulment proceedings concerning Permit 13-P-37, the record will show your appearance and counsel representing you. The names of witnesses you bring will be entered and you will have the privilege of offering proper documentary evidence. If you will refer to the citation that we sent you on Form 1430-A, by registered mail, on November 5, 1943, you will see that it is not required that you submit a paper in the nature of a formal answer. Your defense would be prepared with respect to the charges that appear on the reverse side of Form 1430-A. In order that you may have for reference the procedure concerning hearings of the nature of those now pending, there is transmitted herewith a typed copy of Treasury Decision 5152, of June 3, 1942, which shows that in proceedings under the Federal Alcohol Administration Act, the procedure prescribed by Regulations No. 3 (1942) is followed.

Under separate cover, there is supplied you a copy of Regulations 3, Industrial Alcohol, 1942. If other copies of this publication would be required, such copy should be obtained by purchase from the Superintendent of Documents, United States Government Printing Office, Washington, D. C. The provisions which relate mainly to permit hearings are Sections 182.238 and following. Reference also could be made to Sections 182.220 to 182.225. You should supply your attorney with a copy of the Federal Alcohol Administration Act of August 29, 1935, as amended to January 1, 1941. You no doubt have the publication at your place of business. For the information of your attorney, the pamphlet is sold by the Superintendent of Documents, United States Government Printing Office, Washington, D. C.

In addition to the typed copy of Treasury Decision 5152, there are enclosed two copies of mimeographed form letter, dated November 24, 1941, showing the address of the

Committee on Practice, Treasury Department, Washington, D. C., which should be supplied to your attorney.

Very truly yours,

A. V. ANDERSON,
District Supervisor

Encls.

Exhibit 15.

Registered No. 225360.

AT:L:JAH

January 5, 1944.

Mr. Forest E. Levers, Co-Partner; Mr. Forest E. Levers,
Special Administrator of Levers Brothers, DBA: Levers
Brothers, 209 East Second Street, Roswell, New Mexico.

Dear Mr. Levers:

Docket No. FA-7.

280 In the matter of notice of contemplated denial of Permit, under the Federal Alcohol Administration Act, under No. 13-P-66, re Form 1632, Application for Wholesaler's Basic Permit, under the Federal Alcohol Administration Act, executed November 29, 1943.

Docket No. FA-8.

In the matter of notice of contemplated denial of Permit, under the Federal Alcohol Administration Act, under No. 13-I-12, re Form 1630, Application for Importer's Basic Permit, under the Federal Alcohol Administration Act, executed November 29, 1943.

Notices of December 18, 1943 and January 1, 1944, have indicated that the District Supervisor, Alcohol Tax Unit, is of the opinion that the business proposed under Wholesaler's Basic Permit and Importer's Basic Permit, Nos. 13-P-66 and 13-I-12, would not be maintained in conformity with federal law and regulations; and that a hearing with respect to the contemplated denials of permits could be had January 19, 1944, at 2:00 P.M., Room 319, Rosenwald Building, Albuquerque, New Mexico, in consolidation with the hearing in the matter of annulment of Permit 13-P-37, issued on Form 1633, December 26, 1941, as a Wholesaler's Basic

Permit for Levers Brothers (Forest E. Levers and Oran C. Dale, dba), 209 East Second Street, Roswell, New Mexico.

In reply to your letters of January 1, 1944, relating to Docket Nos. FA-7 and FA-8, requesting more details as statements of grounds for denial of the permits pursuant to the applications on Forms 1632 and 1630, each executed November 29, 1943—the view is held that practices exist that would be continued in violation of Sections 5 (a) and (b) of the Federal Alcohol Administration Act of August 29, 1935, as amended, in the operation of the business known as Levers Brothers, 209 East Second Street, Roswell, New Mexico: that these practices result in a control of certain retail outlets in the State of New Mexico for distilled spirits, wine, or malt beverages, that affects the purchasing policies of these outlets as to liquors that have been shipped, or have moved, in interstate commerce; that the policies of the firm known as Levers Brothers would continue to control the path or way of "interstate commerce" in liquors (coming into New Mexico) and obstruct that path or way for their own advantage and to the disadvantage of others.

Very truly yours,

A. V. ANDERSON,

District Supervisor.

im
By Registered Mail.

Jas. J. McNamara,

Lawyer

Clovis, New Mexico

January 18, 1944.

Mr. A. V. Anderson, District Supervisor, Alcohol Tax Unit,
535 Symes Building, Denver 2, Colorado.

283-b Dear Mr. Anderson: This will certify that the undersigned is a member of the Bar of New Mexico, in good standing and actively engaged in practice; that he has never been refused admission to practice before the Treasury Department; that he did, on January 11, 1944, write to the

Committee on Practice, Treasury Department, Washington, D. C. requesting Form 23, and that he will, as soon as these forms are received, file application according to the instructions thereon.

Respectfully yours,

JAS. J. McNAMARA.

Exhibit 47.

Copy Exhibit No. 1

Articles of Incorporation of Smoke House, Inc.
(No Stockholders Liability)

312 We, the undersigned, all of whom are citizens of the United States in order to form a corporation for the purposes hereinafter stated, under and in pursuance of Chapter 32 of the 1929 Codification of the Laws of New Mexico, together with all supplements thereof, and amendments thereto, do make, sign and acknowledge this instrument and declaration, which when approved is and shall be the Articles of Incorporation of said corporation.

Article I.

That the name of the corporation shall be

Smoke House, Inc.

Article II.

The principal office of the corporation shall be located in the City of Roswell, New Mexico, and Claude J. Neis, is designated as the statutory agent therein, in charge thereof, and upon whom process against the corporation may be served.

Article III.

That the object and purpose for which the corporation is established are:

To own, acquire, maintain, operate, carry on, and conduct the business of restaurant keeper, cigars, cigarettes, tobacco of all kinds and forms, candies and confections, news and magazine dealer, and soft drinks of all kinds; and in general any business necessary and incidental thereto.

Verified as an exact copy of the articles of incorporation in the files of the State Corporation Commission of New Mexico. January 19, 1944. Cosme R. Garcia, Clerk of the Commission.

313 To own, acquire, maintain, operate, carry on and conduct the retail business of buying and selling malt liquors, alcoholic spirits, liquors and liquids of all kinds and sort, and of materials necessary and incidental thereto, and all other articles, products and supplies necessary or convenient for use in connection with and in carrying on the business herein mentioned or any part thereof, and, or the general merchandise business.

To acquire, undertake, buy, sell, deal in, use, operate and maintain the business and good will, trade-marks, trade-names, property, rights, franchises, contracts, and assets of every manner and kind in connection with any business of the corporation and the liabilities of any person, firm, association, or corporation, either wholly or in part, and to pay for the same in cash, or in the stocks, bonds, or other evidence of indebtedness of this corporation.

To establish one or more stores, offices and branch houses for the conducting and operation of any of the business of this corporation, and to lease, buy, sell and deal in real estate, improved or unimproved, and to purchase, acquire, hold, own, mortgage, pledge, lease, sell assign, transfer, invest in, deal in or with goods, wares, merchandise, and property of every description, and to carry on any of the above business of this corporation, and any other business incidental to or connected with the main purpose of the corporation, both within the State of New Mexico, or elsewhere to the extent of the laws of the state will permit.

To enter into, make, perform, and carry out contracts of every kind, including the making of loans, and for any lawful purpose, with any person, firm, association or corporation.

314 To purchase, hold and reissue the shares of its capital stock, its bonds and other securities, with a view to effectuate, directly or indirectly, its object and purpose, or any of them, the corporation may, in the discretion of the directors from time to time, carry on any other

lawful business to the extent and in any manner not unlawful. To do all or any acts in furtherance of the above named powers or necessary or incidental to the conducting of any business herein and for promoting and securing greater economies in the operation thereof. The foregoing clauses shall be construed both as objects and powers, but no recitation, expression of declaration or specific or special powers or purposes herein enumerated shall be deemed to be exclusive; but it is hereby expressly declared that all other lawful powers not inconsistent therewith are hereby included.

The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate in the manner now or hereafter prescribed by statute for the amendment of the certificate of incorporation.

Article IV.

That the place of business of the corporation shall be in the City of Roswell, New Mexico, and that a branch office, store, or house, may be opened at such other places within the State of New Mexico or elsewhere as may be designated by the Board of Directors.

Article V.

That the corporation shall run for a period of fifty (50) years from the date of filing of its Articles of Incorporation with the State Corporation Commission.

Article VI.

315 The total authorized capital stock of the corporation that may be issued by it shall consist of 100 shares of common stock, without nominal or par value, and the amount of the capital stock with which the corporation may commence business is \$12,500.00.

Article VII.

That the names and post office addresses of the incorporators and the number of shares of stock subscribed by each are:

Names	Residences	Shares
Rolland E. Levers	Rocky Ford, Colorado	94
J. Clifton Hearn	Hagerman, New Mexico	4
Leland King	Roswell, New Mexico	2

Article VIII.

The affairs and business of the corporation shall be conducted and managed by a Board of Directors of not less than 3 or more than 5. A majority of the Board may perform any act, or exercise any power which the Board has authority or power to do or perform. Vacancies on the Board shall be filled and the number of Directors may be changed at any time as prescribed by the By-Laws. The names and residence of the Directors who shall manage the affairs of the corporation for the first three months of its existence and until their successors are regularly elected and qualified are as follows.

Names	Residences
Rolland E. Levers	Rocky Ford, Colorado
J. Clifton Hearn	Hagerman, New Mexico
Leland King	Roswell, New Mexico

Article IX.

The shares of the capital stock when issued shall be non-assessable and may be disposed of by the corporation, acting through the Board of Directors, for such consideration as may be fixed by them, and the Board of Directors may exchange any or all of the said shares for any property which, in the opinion of the Board of Directors may be necessary or profitable for the transaction of the business of the corporation.

Article X.

316 The corporation shall have the power and right to use its profits, surplus and reserve in the acquisition of property including its own capital stock, as the Board of Directors may see fit and such property or capital stock of this, and, or other corporation or corporations taken in payment of any debt to the corporation, shall not be regarded as profits for the declaration or payment of dividends, unless so determined by the Board of Directors.

Article XI.

In furtherance, and not in limitation of the powers conferred by statute, the Board of Directors are expressly authorized:

To hold their meeting, to have one or more offices and to keep the books of the corporation within, or except as otherwise provided by statute, without the State of New Mexico, at such places as may, from time to time be designated by them.

To determine from time to time, whether, and, if allowed, under what conditions and regulations the accounts and books of the corporation shall be opened to the inspection of its stockholders and the stockholder's rights in this respect are and shall be restricted or limited accordingly, and no stockholder shall have any right to inspect any account, book or document of the corporation, except as conferred by statute or authorized by the Board of Directors or by a resolution of the stockholders.

To make, order, amend and rescind the By-Laws of the Corporation, to fix, determine, from time to time and vary the amount to be reserved as working capital, to determine the times for the declaration and payment and the amount of each dividend on the stock, to determine and direct the use and disposition of any surplus or net profits, and to authorize and cause to be executed the mortgages and liens upon the real and personal property of the corporation, provided always that a majority of the whole Board concur therein.

317 Pursuant to the affirmative vote of the holders of the majority of the stock issued and outstanding at a stockholders' meeting, duly convened, to sell, assign, transfer or otherwise dispose of the property, including the franchise of the corporation as an entirety, provided always that a majority of the whole Board concur therein.

In Witness Whereof, the undersigned have signed this

certificate and affixed their seals hereto, this the 29th day of March, 1935, and 2nd day of April, 1935 respectively.

ROLLAND E. LEVERS (Seal),
J. CLIFTON HEARN (Seal),
LELAND KING (Seal).

State of Colorado, County of Otero, ss.

On this the 29th day of March, 1935, before me, the undersigned, a Notary Public, in and for the said county, personally appeared Rolland E. Levers, to me known to be the person described in and who executed the foregoing instrument and who acknowledged to me that he executed the same as his free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this the 29th day of March, 1935. Fred Knause, Notary Public. My Commission expires December 3, 1938. (Seal.)

State of New Mexico, County of Chaves, ss.

318 On this the 2nd day of April, 1935, before me, the undersigned, a Notary Public, in and for the said County, personally appeared, J. Clifton Hearn and Leland King, to me to be the persons described in and who executed the foregoing instrument and each severally acknowledged to me they executed the same as their free act and deed,

In Witness Whereof, I have hereunto set my hand and affixed my official seal this the 2nd day of April, 1935. Carl A. Johnson, Notary Public. My Commission expires 7/11/37. (Seal)

No. 18871

Cor. Rec'd. Vol. 8 Page 403

Certificate of Incorporation of Smoke House, Inc.
(No Stockholders' Liability)

Ent'd. J.D.F.

Rec'd

In'x'd. M.C.

319 Filed in Office of State Corporation Commission of
New Mexico Apr. 6-1935-11:10 A.M.

JOSE D. FERNANDEZ, Clerk.

Filing \$25.00

C.C. \$3.30

Exhibit 48

Copy Exhibit No. 2

Amendment to Certificate of Incorporation of
Smoke House, Inc.

320 The Smoke House, Inc., a Corporation of New Mexico, doth hereby certify that it has changed its name to Standard Liquor Stores, Inc., said change having been declared by resolution of the Board of Directors of said Corporation to be advisable, and having been duly and regularly assented to by a vote of two-thirds in interest of all stockholders, having voting powers, at a meeting duly called by the Board of Directors for that purpose; and the written assent of said stockholders is hereto appended.

The location of the office of said corporation is Room 216 J. P. White Building, Roswell, New Mexico, and the statutory agent is Claude J. Neis.

In Witness Whereof, the said corporation has caused this certificate to be signed by its president and secretary and its corporate seal to be hereunto affixed the 11th day of Oct. 1935.

(Seal)

ROLLAND E. LEVERS, President.
LELAND KING, Secretary.

Affidavit of President and Secretary

State of New Mexico, County of Chaves, ss.

On this the 11th day of Oct. 1935, before me appeared Rolland E. Levers, President and Leland King, Secretary of the Smoke House, Inc., each to me personally known, each for himself and not one for the other, did say that Rolland E. Levers is such Vice-President, and Leland King is such Secretary, respectively, of said above corporation, mentioned in and which executed the foregoing certificate; and that the seal affixed to said instrument is the corporate seal of said corporation; that said instrument was
321 signed and sealed in behalf of said corporation by authority of its Board of Directors and with the assent of at least two-thirds in interest of all of the stockholders of said corporation, having voting powers, as the voluntary act and deed of said corporation.

And affiants further say that the assent hereto appended is signed by two-thirds in interest of all of the stockholders of said corporation having voting powers, either in person or by their severally duly constituted proxies or attorneys in fact, thereunto duly authorized in writing.

ROLLAND E. LEVERS, President.

(Seal)

LELAND KING, Secretary.

Subscribed and sworn to before me this the 11th day of Oct. 1935. W. L. Lile, Notary Public. My Commission Expires: March 26th, 1939. (Seal).

(Seal)

Stockholders Assent to Change

322 We, the subscribers, being all of the stockholders of the Smoke House, Inc., having voting powers, having, at a meeting regularly called for the purpose, voted in favor of changing the name of said corporation to Standard Liquor Stores, Inc., do now pursuant to the statute, hereby give our written assent to said change.

Witness our hands and seals this the 11th day of Oct.
1935.

ROLLAND E. LEVERS 94 shares
J. CLIFTON HEARN 4 shares
LELAND KING 2 shares

No. 20243

Cor. Rec'd. Vol. 8 Page 472

Amendment Changing Name of

Smoke House, Inc., to Standard Liquor Stores, Inc.

Ent'd C.R.G.

Rec'd

In'x'd. M.C.

323 Filed in Office of State Corporation Commission of
New Mexico Jan. 20, 1936--2:30 P.M.

COSME R. GARCIA, Clerk.

Filing \$20.00

C.C. \$1.60

Verified as an exact copy of the Amendment to Certificate
of Incorporation in the files of the State Corporation Com-
mission of New Mexico.

January 19, 1944

COSME R. GARCIA,
Clerk of the Commission.

Exhibit 49.

Annual Report

To the State Corporation Commission of New Mexico

324 The Corporation herein named, organized under the laws of New Mexico does hereby make the following report in compliance, with the provisions of Section 32-149, New Mexico Statutes, Codification of 1929.

I. The name of the Corporation is Standard Liquor Stores, Inc.

II. The location (town or city, street and number, if street and number there be) of its registered office in New Mexico, is 124 N. Main St., Roswell, N. M.

The place where the business is carried on is

The Agent upon whom process against the Corporation may be served is Leland P. King, Sec.-Treas. whose postoffice address is 124 N. Main St. Roswell, N. M.

(If Foreign Corporation) Its Home Address

III. The character of its business Retail Liquor and as otherwise specified in its Certificate of Incorporation.

IV. (a) The amount of its authorized capital stock is \$12,500.00

(b) The amount actually issued and outstanding is \$12,500.00

(Foreign) The issued capital stock represented by its property and business in this State is \$ None

V. The names and addresses of all the Directors and Officers of the Company and the date when the term of office of each expires, are as follows, to-wit:

July 1, 42

Name	Office	Address	Date When Term Expires
Rolland E. Levers	President	Wynne Hotel, Denver, Colo.	
Oran C. Dale	Vice-President	Roswell, N. M.	
Leland P. King	Secretary-Treas.	Roswell, N. M.	
	Treasurer		
J. Clifton Hearn	Director	Chandler, Ariz.	
Rolland E. Levers	Director	Wynne Hotel, Denver, Colo.	
Oran C. Dale	Director	Roswell, N. M.	
Leland P. King	Director	Roswell, N. M.	
	Director		
	Director		

Must Be Filed Within Thirty Days After Time Appointed For Annual Meeting

All Blank Space Must Be Filled Out

VI. The date appointed for the next annual meeting of the stockholders for the election of Directors is the second Tuesday in July 1942.

To be signed by the
president and another
Officer or any two Di-
rectors

(ORAN C. DALE Vice-Pres.

(Seal)

(LELAND P. KING, Sec-Treas.

Note:—All Domestic Corporations are required to have not less than three Directors; one of whom shall be an active resident of New Mexico unless otherwise provided in the by-laws.

All Directors of Domestic Corporations must be Stockholders of such Corporation.

Every Domestic Corporation must have a President, Secretary and Treasurer, and the President must also be a Director.

Whenever a Foreign Corporation changes its Statutory Agent, for any reason, formal appointment of the new Agent is required to be filed in the office of the State Corporation Commission. Blank for such appointment will be furnished upon application.

Note:—For filing annual report, five cents for each one thousand dollars, or fraction thereof of its issued capital stock, if a domestic corporation, and for foreign corporations five cents for each one thousand dollars, or fraction thereof, of its issued capital stock represented by its property and business in this State, but in no case less than Five Dollars (\$5.00).

Verified as an exact copy on the report in the files of the State Corporation Commission of the State of New Mexico January 19, 1944. Cosme R. García, Clerk of the Commission.

[On reverse.]

325 Every Domestic corporation and every foreign corporation doing business within this State except organizations incorporated for religious, charitable or benevolent purposes, or those not organized for profit, shall file in the office of the State Corporation Commission Within Thirty Days After the First Election of Directors and Officers, and Annually Thereafter Within Thirty Days After the Time Appointed for Holding the Annual Election of Directors, a report authenticated by the signatures of the president, and one other officer, or by any two directors, as indicated by the form on reverse side hereof.

If such report is not so made and filed within ninety days after receipt of notice to do so, the corporation shall forfeit the right to do business in this State.

(See Section 932, Et Seq. N. M. Statutes, Codification of 1915.)

No. 6178

Annual Report of Standard Liquor Stores, Inc.

A Corporation Organized Under Laws of
N. Mexico for Year 1941

Filed in Office of State Corporation Commission of New
Mexico July 19, 1941. Cosme R. Garcia, Clerk.

Exhibit 50.

Annual Report

To the State Corporation Commission of New Mexico

326 [With the exception of officers, filing date, etc., printed here, the remaining portions of Exhibit 50 Standard Liquor Stores, Inc. Annual Report for 1942 is identical with Exhibit 49, Annual Report for 1941 appearing at page 209.]

V. The names and addresses of all the Directors and Officers of the Company and the date when the term of office of each expires, are as follows, to-wit:

Name	Office	Address	Date When Term Expires
Rolland E. Levers	President	Denver, Colo.,	
Oran C. Dale	Vice-President	Roswell, N. M.	
Leland P. King	Secretary	Roswell, N. M.	
Leland P. King	Treasurer	Roswell, N. M.	
Rolland E. Levers	Director	Denver, Colo.	
Oran C. Dale	Director	Roswell, N. M.	
Leland P. King	Director	Roswell, N. M.	
.....	Director	
.....	Director	
.....	Director	

VI. The date appointed for the next annual meeting of the stockholders for the election of Directors is July 6, 1943

To be signed by the president and another Officer or any two Directors

(ORAN C. DALE, Vice-President
(LELAND P. KING, Sec-Treas.

Exhibit No. 9

[On reverse.]

No. 6178

Annual Report of Standard Liquor Stores Inc.,
A Corporation Organized Under Laws of
New Mexico for Year 1942

327 Filed in Office of State Corporation Commission of
New Mexico Aug. 15, 1942. Cosme R. Garcia, Clerk.

Must Be Filed Within Thirty Days After Time Appointed for Annual Meeting

All Blank Space Must Be Filled Out

Exhibit 51.

State of New Mexico

Printed Seal of State Corporation Commission
of New Mexico

Certificate of Filing.

United States of America, State of New Mexico, ss.

328 It is Hereby Certified, that there was filed for record in the office of the State Corporation Commission of the State of New Mexico on the Seventh day of October A. D. 1943 at 10:15 A. M.

—Certificate of Dissolution of—

—Standard Liquor Stores, Inc.,—

The Standard Liquor Stores, Inc., a corporation organized under the laws of New Mexico; and a duly executed consent in writing that said corporation be dissolved; and this Commission being satisfied that all of the requirements of Section 54-501 New Mexico Statutes Annotated, Compilation of 1941, relating to the voluntary dissolution of corporations have been duly complied with;

Now, Therefore, upon the filing with this Commission of an affidavit showing that this Certificate has been published as required by law, the said corporation shall be dissolved.

The principal office of the said corporation in this State is in Roswell, New Mexico, and the name of the agent in charge thereof and upon whom service may be made is Oran C. Dale, P. O. Box 1011, Roswell, N. M.

20243

In Testimony Whereof, the State Corporation Commission of the State of New Mexico has caused this certificate to be signed by its Chairman and the seal of said Commission to

be affixed at the City of Santa Fe on this Eleventh day of October A. D. 1943.

(State Corporation Commission Seal)

ROBERT VALDEZ, Chairman.

Attest:

COSME R. GARCIA, Clerk.

Verified as an exact copy in the files of the State Corporation Commission of the State of New Mexico, January 19, 1944. Cosme R. Garcia, Clerk of the Commission.

Exhibit 51-a.

Santa Fe, New Mexico

Date September 27, 1943

State Corporation Commission, Santa Fe, New Mexico.

Received, Sept. 27, 1943. Corporation Commission.

329 Gentlemen: This is to advise that the School Tax Division, New Mexico Bureau of Revenue, has no objection to withdrawal of:

Standard Liquor Stores, Inc.

P. O. Box 1011, Roswell, New Mexico

as above named company has engaged in no taxable business, or has made satisfactory arrangements to discharge any and all obligations that may be found to be due the School Tax Division.

Yours very truly,

J. O. GALLEGOS,
Commissioner of Revenue,

By VICTOR SALAZAR, Director.

Exhibit 51-b.

Commissioners
 Robert Valdez, Chairman
 Don R. Casados
 Eugene Allison
 Cosme R. Garcia, Clerk

Rebecca D. Baca
 Clerk of the Dept.

State Corporation Commission

Franchise Tax Department

Printed Seal Great Seal of the
 State of New Mexico, 1912.

The Capitol, Santa Fe, New Mexico, September 2, 1943

Received Sept. 2, 1943. Corporation Commission.

Corporation Department, State Corporation Commission,
 Santa Fe, New Mexico.

Re: Standard Liquor Stores, Inc.

330 Gentlemen: The provisions of the Franchise Tax Act having been complied with in full, this Department consents to the dissolution or withdrawal of the corporation named herein from the State of New Mexico.

Yours very truly,

STATE CORPORATION COMMISSION,
 Franchise Tax Department,
 By REBECCA D. BACA, Chief Clerk.

rdh

Exhibit 51-c.

State of New Mexico

Income Tax Division Bureau of Revenue
 Santa Fe

Received Oct. 1, 1943. Corporation Commission.

September 2, 1943

State Corporation Commission, Santa Fe, New Mexico.

In Re: Standard Liquor Stores Inc., Roswell, N. M.

331 Gentlemen:—The provisions of the Income Tax Act, having been complied with in full, or satisfactory adjustment in compliance having been made, this Division con-

sents to the dissolution or withdrawal, of the above named corporation from the State of New Mexico.

Yours very truly

INCOME TAX DIVISION,
EARLE KERR, Director,
W. S. BARNES, Chief Auditor,
By NATALIA C. MADRID,
Secretary.

Exhibit 51-d.

Certificate of Dissolution of Standard Liquor Stores,
Inc., and Consent in Writing of All Stockholders.

State of New Mexico, County of Chaves, ss.

332 It Is Hereby Certified That we, the undersigned, being all of the stockholders holding or owning any stock of the Standard Liquor Stores, Inc. a corporation, organized, existing and doing business under the laws of the State of New Mexico, deeming it advisable and most for the benefit of said corporation and of the stockholders thereof that the same should be forthwith dissolved.

Therefore, we do hereby give our consent in writing to the voluntary dissolution thereof, as provided by Section 32-136 of the 1929 New Mexico Codification, and do hereby sign this consent to the end that it may be filed in the office of the New Mexico State Corporation Commission.

The location of the registered office of the corporation is at Roswell, New Mexico. The statutory agent upon whom process against the corporation may be served is Oran C. Dale, P. O. Box 1011, Roswell, N. M.

Witness our hands and seals this 25th day of Sept. 1943, at Roswell, N. M.

Shares 2
96
2

Total 100

ROLLAND E. LEVERS
ORAN C. DALE
LELAND P. KING

Exhibit 51-e.

Certificate As to the Names and Addresses of Directors and Officers of Standard Liquor Stores, Inc.

333 We, the undersigned, Vice President and Secretary respectively of the Standard Liquor Stores, Inc. do hereby certify that the names and addresses of the officers and directors of said corporation are as follows:

Officers

Names

Addresses

Rolland E. Levers

Durango, Colorado

President

Oran C. Dale

P. O. Box 1011, Roswell, N. M.

Vice-President

Leland P. King

902 N. Richardson, Roswell, N. M.

Secretary

Leland P. King

" " " " "

Treasurer

Directors

Names

Addresses

Rolland E. Levers

Durango, Colorado

Oran C. Dale

P. O. Box 1011, Roswell, N. M.

Leland P. King

902 N. Richardson, " "

ORAN C. DALE, Vice President

LELAND P. KING, Secretary

Exhibit 51-f.

Affidavit As to Payment of Taxes.

State of New Mexico, County of Chaves, ss.

334 Oran C. Dale and Leland P. King Vice-President and Secretary, respectively of Standard Liquor Stores, Inc., a corporation organized and existing under the laws of the State of New Mexico, being first duly sworn upon their oath certify that all taxes levied upon or as-

essed against said Standard Liquor Stores, Inc., a New Mexico corporation, under the laws of the State of New Mexico are fully paid and that said corporation is not now indebted to the State of New Mexico in any sum for taxes levied upon or assessed against said corporation.

ORAN C. DALE, Vice President
LELAND P. KING, Secretary

Subscribed and sworn to before me this 25th day of Sept., 1943. W. L. Lile, Notary Public. My Commission Expires: Jan. 21st 1946. (Seal).

Exhibit 51-g.

Affidavit.

Received Oct. 1, 1943. Corporation Commission.

Copy of Resolution

335 Resolved, that the sale of the assets of the Standard Liquor Stores, Inc., to Oran C. Dale on consideration that he acquire, surrender and deliver to said corporation all its outstanding common stock, which sale was consummated on June 30, 1943, be, and the same is hereby formally approved, ratified and confirmed.

Adopted, this 26th day of August, 1943.

ROLLAND E. LEVERS, Director
LELAND P. KING, Director

State of New Mexico, County of Chaves, ss.

Before me a Notary Public, this 26th day of August 1943, personally appeared Oran C. Dale who certifies that the foregoing Resolution is a true and correct copy of the minutes of the Standard Liquor Stores, Inc.,

Oran C. Dale Affiant

Subscribed and sworn to before me a Notary Public this 26th day of August, 1943. My Com. Expires Jan. 21, 1946. W. L. Lile, Notary Public. (Notary Seal).

No. 20243

Cor. Rec'd Vol 5 Page 165

Certificate of Dissolution of
Standard Liquor Stores, Inc.

Ent'd C.R.G.

Rec'd

In'x'd B.R.

336 Filed in Office of State Corporation Commission of
New Mexico Oct. 7, 1943—10:15 A. M. Cosme R. Gar-
cia, Clerk.

Filing \$5.00

C.C. \$.....

Exhibit 52.

State of New Mexico, County of Lea, ss.

337 I, Pearl B. McClathery, County Clerk for the
County and State aforesaid, do hereby certify that the
following instruments have been filed of record covering
Lots 6 and 7, Block 4, South Eunice Addition to the Town
of Eunice:

Warranty Deed from W. V. Jones to E. C. Hill, dated
Sept. 29, 1933, filed January 27, 1936, recorded in Book 42,
page 569.

Warranty Deed from E. C. Hill, et ux, to W. L. Lile,
dated January 27, 1936, filed February 29, 1936, recorded
in Book 42, page 569.

Warranty Deed from W. L. Lile to Jack Striff, et ux, deed
dated May 4, 1936, filed May 6, 1936, recorded in Book 45,
page 41.

Mortgage Deed from Jack Striff, et ux, to Levers Bros,
dated May 4, 1936, filed May 6, 1936, recorded in Book 17,
page 476. Amount \$1650.00

Lis Pendens filed by Acme Lumber Company vs Jack
Striff, et ux, dated January 23, 1937, filed January 25, 1937,
Amount \$692.52

Lien covering Lot 7, Block 4 Owen Addition to Eunice (which I believe is a part of the South Addition) Acme Lumber Company against Jack R. Striff, dated August 21, 1936, filed August 22, 1936, recorded in Book 2, page 183. Amount \$530.52.

Warranty Deed from Ray E. Levers, et al to Standard Liquor Stores, covering Lot 7, South Addition, deed dated March 20, 1937, filed March 30, 1937, recorded in Book 45, page 496.

Special Master Deed from Orin C. Dale, Jr., Special Master to Ray E. Levers, et al, dated Feb. 27, 1937, filed March 30, 1937, recorded in Book 50, page 590 and covering Lots 6 & 7, South Eunice Addition.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this the 22nd day of September, A. D., 1942.

PEARL B. McCLATHERY,
County Clerk
By EVA TATUM, Deputy

Exhibit 53.

State of New Mexico, County of Lea, ss.

338 I, Pearl B. McClathery, County Clerk for the County and State aforesaid, do hereby certify that the following is a list of the Warranty Deeds and Mortgage Deeds of record on Lot 11, Block 35, Original Town of Hobbs, New Mexico, from January 1, 1934, to March 4, 1939:

Warranty Deed from Zork Hardware Company to Levers Bros. dated Oct. 2, 1934, filed Nov. 21, 1934, recorded in Book 37, page 288 of the Deed Records.

Mortgage Deed from Levers & Levers to Zork Hardware Company, dated October 2, 1934, filed Dec. 1, 1934; amount \$1500.00, recorded in Book 16, page 155 of the Mortgage Deed Records.

Warranty Deed from Levers & Levers to D. L. Parker, dated Feb. 18, 1935, filed Feb. 23, 1934, recorded in Book 33, page 237 of the Warranty Deed Records.

Mortgage Deed from D. L. Parker to O. C. Dale, dated Feb. 18, 1935, filed Feb. 23, 1935, amount \$6000.00, recorded in Book 16, page 28 of the Mortgage Deed Records.

Satisfaction of Mortgage from Oran C. Dale to D. L. Parker, dated August 18, 1937, filed Nov. 5, 1937, recorded in Book 4, page 517 of the Release Records.

Warranty Deed from D. L. Parker to Standard Liquor Stores, dated July 31, 1937, filed Nov. 5, 1937, recorded in Book 54, page 151 of the Warranty Deed Records.

Release of Mortgage from Zork Hardware Company to R. E. & Forest E. Levers, dated February 24, 1938, filed February 28, 1938, recorded in Book C, page 306 of the Release Records.

Warranty Deed from Standard Liquor Stores to Robert C. Prater, dated March 8, 1938, filed March 14, 1938, recorded in Book 56, page 531 of the Warranty Deed Records.

Mortgage Deed from Robert C. Prater to R. E. & F. E. Levers, dated March 8, 1938, filed March 15, 1938, amount \$4,500.00, recorded in Book 20, page 391 of the Mortgage Deed Records.

Assignment of Mortgage from R. E. & F. E. Levers to Lea County State Bank, dated March 31, 1938, filed April 2, 1938, recorded in Book 20, page 438 of the Mortgage Deed Records.

Release of Mortgage from Lea County State Bank to Robert C. Prater, dated January 19, 1939, filed March 4, 1939, recorded in Book 5, page 73 of the Release Records.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this the 1st day of September, A. D. 1942.

PEARL B. McCLATHERY,
County Clerk

By EVA TATUM, Deputy

Exhibit 54.

339- I hereby certify the following to be a true photostatic copy of the permanent roster record of R. E. Levers. *

STATE CIVIL SERVICE COMMISSION,
ALICE M. GAFFY,
Secretary and Executive Officer.

Public Roster.

Name Levers, Rolland E. Class L. Subclass Grade 4
Rank

Position State Revenue Collector Salary, \$150.00 Per
Month, \$1800.00 Per Annum

Department Sales Tax Div. (State Treasurer) Maintenance

Application No. 11287 Examined 6-4-35 Rating 93.06
Requisition, Date of

Certification, Date of 10-2-35 Prov. Appointment, Date of
Apr. 8, 1935 Employment, Date of Apr. 8, 1935

Duties

Record continued to Book 13, Page 384.

Date

Change and Cause

1935

Aug. 31 Services terminated—rating in examination too low to permit certification.

Oct. 2 Name reached on eligible list. Permanently certified to position of State Revenue Collector, \$150 per month.

1936

July 1 2 weeks vacation with pay and 2 weeks leave without pay.

Aug. 10 3 month's leave without pay.

Nov. 12 Returned to duty 11-10-36.

1937

July 15 Two weeks vacation with pay and one and one half months' leave without pay.

Date	Change and Cause
Sept. 15	One month's leave of absence without pay (extended due to illness).
Oct. 1	Returned to work.
1938	
Aug. 18	Two weeks vacation with pay and one month's leave without pay.
Sept. 14	Returned to duty.
1939	
Sept. 18	Two weeks vacation with pay and one months leave without pay. (Cancelled).
Sept. 25	Two weeks vacation with pay.

Exhibit 55.

340 I hereby certify the following to be a true photo-static copy of the permanent roster record of R. E. Levers.

STATE CIVIL SERVICE COMMISSION,
ALICE M. GAFFY, Secretary and
Executive Officer.

Public Roster

Name Levers, R. E. Class L Subclass Grade 4
Rank Position State Revenue Collector Salary \$150.00 Per Month \$1800.00 Per Annum Department of Revenue Maintenance Application No. 11287 Examined 6-4-35 Rating 93.06 Requisition, Date of Perm Certification, Date of 10/2/35 Appointment, Date of 10/2/35 Employment, Date of 10/2/35 Duties

Record continued from Book 9, Page 56

Date	Change and Cause
1941	
July 1	Transferred to Dept of Revenue 7/1/41—Emergency Certification for July.
July 31	Laid off—name placed on preferred list of eligibles

Date	Change and Cause
Aug 1	Twenty-eight days vacation with pay (Took only 25 days)
Aug 25	Certified, from preferred list of eligibles, to position of File Clerk-Typist, \$100.00 per mo. Dept of Revenue—Motor Vehicle Division
Sept 18	Changed to position of clerk. Typist, \$100 per mo. Dept. of Revenue.
Dec 18	Certified from Preferred List of Eligibles to position of Collector, \$150.00 mo. Dept of Revenue.
1942	
May 1	Title changed to District Supervisor and salary increased to \$175 per month
Aug 24	Eighteen days vacation with pay
Sept 12	One month's sick leave with pay
Dec 1	Salary increased to \$200 month.
1943	
May 14	Two weeks vacation with pay.
May 28	Nine days sick leave with pay.
June 9	Five months, twenty-two days sick leave without pay.
June 8	Sick leave cancelled—Returned to duty.

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1948

SPECIAL-TAX RETURN 9

(SEE INSTRUCTIONS ON BACK)

Name Standard Liquor Stores "Inc", d.b.a. Smoke House

(Print name, followed by trade name)

Business address 124 N. Main St., Roswell, Okla. New Mexico

(Street and number, or rural route)

(City or town)

(County)

(State)

Kind of tax R. L. D. (See list on reverse side for description) 1941 to June 30, 1942

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.☒ RENEWAL.☐ CHANGE OF OWNERSHIP (Date) Aug 30, 1941

Former name and address Standard Liquor Stores, Inc.,

NAME

Rolland E. Levers, President Wynne Hotel, Denver

J. Clifton Hearn, Vice-President Wynne Hotel, Denver

Leland P. King, Sec.-Treas Wynne Hotel, Denver

Sworn to and submitted before me this 15th day of July, 1941, that the above statements are true and correct and the special tax stamp herein applied for is to cover only the business indicated above and at the location specified.

/s/ SILVA V. MEYERS

Notary Public BY COM. exp. 5/23/45

(Official title or signature of witness—see paragraph 2, reverse side)

Received by Collector

(Signed)

By: /s/ LELAND P. KING

Secretary-Treasurer

(State whether individual owner, partnership, firm, or other)

27.50

Check
Certified check
Post Office M.O.

When one form of payment NOT used, this stamp is voidable to Collector of Internal Revenue. Enter amount in above space.

This return, properly executed, must be in the hands of the Collector of Internal Revenue at the time the amount of the tax, on or before the last day of the month in which liability is incurred in the case of a partnership, is certified.

[List of special-tax payers and instructions are printed at page 226.]

14-17724 U. S. GOVERNMENT PRINTING OFFICE

(On reverse.)

List of Special-Tax Payers

Monthly and annual rates to June 30	Monthly	Annually	Monthly and annual rates to June 30	Monthly	Annually
Brewers of less than 500 barrels.....	\$4.58 1/3	\$55.00	Wholesale dealers—colored oleomargarine.....	\$40.00	\$480.00
Brewers of 500 barrels or more.....	9.16 2/3	110.00	Manufacturers of adulterated butter.....	50.00	600.00
Rectifiers of less than 500 barrels.....	9.16 2/3	110.00	Retail dealers—adulterated butter.....	4.00	48.00
Rectifiers of 500 barrels or more.....	18.33 1/3	220.00	Wholesale dealers—adulterated butter.....	40.00	480.00
Retail liquor dealers.....	2.29 1/6	27.50	Manufacturers—process or renovated butter.....	4.16 2/3	50.00
Wholesale liquor dealers.....	9.16 2/3	110.00	Manufacturers—filled cheese.....	33.33 1/3	400.00
Retail malt liquor dealers.....	1.83 1/3	22.00	Retail dealers—filled cheese.....	1.00	12.00
Wholesale malt liquor dealers.....	4.58 1/2	55.00	Wholesale dealers—filled cheese.....	20.83 1/3	250.00
Manufacturers of oleomargarine.....	50.00	600.00	Manufacturers of mixed flour.....	1.00	12.00
Retail dealers—uncolored oleomargarine.....	.50	6.00	Manufacturers of stills.....	4.58 1/3	55.00
Wholesale dealers—uncolored oleomargarine.....	16.66 2/3	200.00	Stills manufactured—for each still.....	22.00	22.00
Retail dealers—colored oleomargarine.....	4.00	48.00	Stills manufactured—for each worm.....	22.00	22.00

Instructions

Special-tax liability is reckoned from the first of July of each year, or the first day of the month during which business is commenced, to the thirtieth day of June following. Where business is begun after the month of July the tax to be remitted is computed by multiplying the monthly rate stated above by the number of months remaining in the fiscal year. If the amount resulting involves a fraction the full cent must be included. Example: A wholesale liquor dealer begins business during September; $9.16\frac{2}{3}$ multiplied by 10 equals \$91.66 $\frac{2}{3}$ or \$91.67, the amount to be remitted.

If application on this form is not filed with the Collector during the month in which the liability began the penalty prescribed by section 3612 (d), Internal Revenue Code, is incurred. Applicant must appear in person before an officer qualified to administer oaths and swear to the correctness of the information given on the application. If the tax covered by this return is not in excess of \$10 the return may be signed or acknowledged before two witnesses instead of under oath. No charge is made if this return is executed before a deputy collector or internal revenue agent.

On the first line must be entered the name of the actual owner or owners of the business, followed by the trade name if one is used, but no application will be accepted nor special-tax stamp issued in a trade name only. Removal of place of business must be registered with Collector of Internal Revenue within 30 days of such removal, or liability to additional tax and penalty will be incurred. File promptly, follow instructions carefully, and avoid delays.

REVENUE
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Bureau of Tax Administration
Washington, D. C. 20548

SPECIAL-TAX RETURN

GIVE INSTRUCTIONS ON BACK

Name Smoke House—Standard Liquor Stores, Inc.
(Print name, followed by trade name)
Business address 126 N. Main St., ROSELLE New Mexico
(Street and number, or rural delivery) (City or town) (County) (State)
Kind of tax Retail Liquor Dealers for period July 1, 1940 to June 30, 1941
(See list on reverse side for description) (Month) (Year)
Show by X in one of the following squares the nature of the application:
☐ FIRST APPLICATION. ☐ CHANGE OF ADDRESS (Date) August 1, 1940
☐ CHANGE OF OWNERSHIP (Date) August 1, 1940 FOR NEW OWNER
NAME Standard Liquor Stores, Inc. 752 Roselle New Mexico
HOME ADDRESS 752 Roselle New Mexico August 1, 1940
Special Tax
Subsequent Return

CHECKS MUST BE CERTIFIED

Sworn to and subscribed before me this

29th day of July, 1940

/s/ THOS. A. HARRISON

Notary Public My Comm. Exp. 12/31/43

(Official title or signature of witness—see paragraph 5, reverse side)

Received by Collector

I swear (or affirm or acknowledge) that the above statements are true and correct and that the special-tax stamp herein applied for is to cover only the business indicated above, and at the location specified.

Club*	Dollars	Cents
Certified check— Post Office M. O.	5	

Sec.-Treas.

These stamps indicate the amount of tax, or if other stamps indicate the amount of tax, or if other stamps indicate the amount of tax.

This return, properly executed, must be in the hands of the Collector of Internal Revenue at the last day of the month in which liability is incurred in order to avoid penalties. Check with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Check must be certified.

12-17762 U. S. GOVERNMENT PRINTING OFFICE

PL 157-13 of 6-12-3-41

Form 11
TREASURY DEPARTMENT
Internal Revenue Service
Revised July 1940

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

38234
(Check number)

Name Clyde Roberts (Print name, followed by trade name)
Business address 326 N. Main
Roswell (City or town)
Chaves (County)
New Mex (State)
Kind of tax Retail Liquor Dealer
(See list on reverse side for designations)
for period 12 (Month) 1941 to June 30, 1942 (Year)

Show by X in one of the following squares the nature of the application:

☒ FIRST APPLICATION.

☐ CHANGE OF OWNERSHIP (Date) _____

☐ RENEWAL.

☐ CHANGE OF ADDRESS (Date) _____

NAME

RECEIVED
JUL 15 1941
16-12

Sworn to and subscribed before _____

18th day of Dec., 1941.

/s/ SYLVA V. MEYERS

Notary Public Ny 3712/23
(Qualify title or signature of notary on reverse side)

As	Dollars	Cents
Cash		
Certified check		
Post Office M.O.		16 10

/s/ CLYDE ROBERTS
(Signed)

Individual

Received by Collector _____

This return, properly executed, must be in the hands of the Collector of Internal Revenue at _____ on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

16-17724 U. S. GOVERNMENT PRINTING OFFICE
JUL 15 1941

[List of special-tax payers and instructions are printed at page 226.]

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
REVISED JULY 1940

SPECIAL-TAX RETURN
(SEE INSTRUCTIONS ON BACK)

9459

11721
(Stamp number)

Aug. 2, 1941
(Date of issue)

Aug. 16, 1941
(Entered in Record Book)

Name Standard Liquor Stores "Inc", d.b.a. Green Lantern Bar
(Print name, followed by trade name)

Business address 326 N. Main St., Roswell Chaves New Mexico
(Street and number, or rural route) (City or town) (County) (State)

Kind of tax R L D for period July 1941 to June 30, 1942
(One list on reverse side for designation) (Month) (Year)

Show by X in one of the following squares the nature of the application:
☐ FIRST APPLICATION. ☐ CHANGE OF ADDRESS (Date) 7/8/41
☐ CHANGE OF OWNERSHIP (Date) 7/30/41

NAME Rolland E. Levers, President HOME ADDRESS Rolland E. Levers, President
J. Clifton Hearn, Vice-Pres. Rolland E. Levers, President
Leland P. King, Sec. Rolland E. Levers, President

Sworn to and subscribed before me this 16th day of July, 1941
/s/ SILVA V. MEYERS Notary Public 5/12/45
(Official title or signature of witness—see paragraph 2, reverse side)

Received by Collector SILVA V. MEYERS
This return, properly executed, must be in the hands of the Collector of Internal Revenue ALBUQUERQUE, NEW MEXICO
with the amount of the tax, on or before the last day of the month in which liability is incurred before the 15th of August. Credits must be certified.

I (or firm or acknowledged) that the above statements are true and correct and the special stamp herein applied for is to cover only the business indicated above and at the location specified.
STANDARD LIQUOR STORES, INC.

(Signed) By: 7/8/ LELAND P. KING
Secretary-Treasurer
(Name whether individual owner, partner, officer, or if other, name of corporation, firm, etc.)

Cash	Certified check	Post Office M.O.
		27 50

Check, cash, or item of personal property, or other valuable property, received by the Collector of Internal Revenue in payment of tax, or if other, name of corporation, firm, etc.

[List of special-tax payers and instructions are printed at page 226.]

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1940

SPECIAL-TAX RETURN (SEE INSTRUCTIONS ON BACK)

Name Standard Liquor Stores, Inc. - "Green Lantern"
(Firm name, followed by trade name)
Business address 326 B. Main St. Roswell Chaves New Mexico
(Street and number, or rural route) (City or town) (County) (State)
Kind of tax Retail Liquor Dealer for period July 1, 1940 to June 30, 1941
(See list on reverse side for designation) (Month) (Year)

Show by X in one of the following squares the nature of the application:
☐ FIRST APPLICATION. ☐ CHANGE OF ADDRESS (Date) Aug. 2, 1940
☐ CHANGE OF OWNERSHIP (Date) Aug. 15, 1940 ☐ FORMER OWNER
(Date) (Year) (Month) (Year)

Standard Liquor Stores Inc.
NAME 326 B. Main St. Roswell, N.M.
Chaves Co.

CHECKS MUST BE CERTIFIED 1582

Sworn to and subscribed before me this 29 day of July, 19 40
I swear (or affirm or acknowledge) that the above statements are true and correct and the special-tax stamp herein applied for is to cover only the business indicated above and at the location specified.

/s/ THOS. A. HARRISON
Notary Public BY COMM.
(Official title or signature of witness - see paragraph 2, reverse side)

Received by Collector LELAND P. KING
(Signed) Sec. - Treas.
(Check whether individual owner, number of firm, or if officer of corporation, give title)

This return, properly executed, must be in the hands of the Collector of Internal Revenue at **ALBUQUERQUE NEW MEXICO** with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

[List of special-tax payers and instructions are printed at page 226.]

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1940

See 82521 59.00 per \$ 126.00 holding for 118
SPECIAL-TAX RETURN
(SEE INSTRUCTIONS ON BACK) 8461

40347
(Stamp number)
Oct. 7, 1940
(Date of issue)

Oct. 9, 1940
(Entered in record 149)

Name The Standard Liquor Stores, Inc., dba The Cantina Bar
(Print name, followed by trade name)

Business address 107 E. 3rd Street Roswell, N M
(Street and number, or rural route) (City or town) (County) (State)

Kind of tax Retail Liquor for period Aug. 1, 1940 to June 30, 1941
(See list on reverse side of Form 11) (Month) (Year)

Show by X in one of the following squares on this application: not shown

☐ FIRST APPLICATION.

☐ CHANGE OF ADDRESS (Date)

☐ FORMER OWNER

NAME

Rolland E. Levers, President Denver, Colo.

Clifton J. Hearn, Vice-President Chandler, Ariz.

Leland P. King, Secretary Roswell, N. M.

Sworn to and subscribed before me this 30 day of Sept., 1940.

/s/ WILLIAM S. NICHOLS

Dep. Coll.

(Official title or signature of witness—see paragraph 2, reverse side)

Received by Collector

This return, properly executed, must be in the hands of the Collector of Internal Revenue at Albuquerque, NEW MEXICO with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

[List of special-tax payers and instructions are printed at page 226.]

Secretary

(State whether individual owner, member of firm, or if officer of corporation, give title)

Cash

Certified check

Post Office M.O.

Other

25 21

(Check one item of payment NOT used. If more than one method is used, check each.)

59.00 per \$ 126.00

15-17754 U. S. GOVERNMENT PRINTING OFFICE

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1940

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

Name Standard Liquor Stores, "Inc" d.b.a. Cantina Bar
(Print name, followed by trade name)
Business address 107 East Third St. Roswell, N.M. New Mexico
(Street and number, or rural route) (City or town) (State)
Kind of tax R L D for period July 1941 to June 30, 1942
(See list on reverse side for classification) (Month) (Year)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.

☐ CHANGE OF OWNERSHIP (Date) July 1941

NAME Rolland E. Levers, President

J. Clifton Hearn, Vice-Pres.

Leland P. King, Sec-Treasurer

Rolland E. Levers, President

J. Clifton Hearn, Vice-Pres.

Leland P. King, Sec-Treasurer

Rolland E. Levers, President

J. Clifton Hearn, Vice-Pres.

Leland P. King, Sec-Treasurer

Rolland E. Levers, President

J. Clifton Hearn, Vice-Pres.

Leland P. King, Sec-Treasurer

Rolland E. Levers, President

J. Clifton Hearn, Vice-Pres.

Leland P. King, Sec-Treasurer

Rolland E. Levers, President

J. Clifton Hearn, Vice-Pres.

Leland P. King, Sec-Treasurer

Rolland E. Levers, President

J. Clifton Hearn, Vice-Pres.

Leland P. King, Sec-Treasurer

Sworn to and subscribed before me on the 25th day of July, 1941

/s/ SYLVA V. MEYERS

Notary Public N. M. 5/27/45 exp.

(Official title or signature of witness on paragraph 2, reverse side)

Received by Collector Rolland E. Levers, President

J. Clifton Hearn, Vice-Pres.

Leland P. King, Sec-Treasurer

Rolland E. Levers, President

J. Clifton Hearn, Vice-Pres.

Leland P. King, Sec-Treasurer

Rolland E. Levers, President

J. Clifton Hearn, Vice-Pres.

Leland P. King, Sec-Treasurer

Secretary-Treasurer
(Check whether Rolland E. Levers, President, J. Clifton Hearn, Vice-Pres., or Leland P. King, Sec-Treasurer)

This return, properly executed, must be in the hands of the Collector of Internal Revenue Rolland E. Levers, President NEW MEXICO with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Rolland E. Levers, President

10-17794 U. S. GOVERNMENT PRINTING OFFICE

List of special-tax payers and instructions are printed at page 226.

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1940

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

7163

274987

(Stamp number)

Name Standard Liquor Stores Inc "Heidelberg Inn"
 Business address 320 S. Turner St., Hobbs (City or town) Lea (County) New Mexico (State)
 Kind of tax Retail Liquor Dealer for period July 1, 1940 (Month) 1940 (Year)
 (Also list on reverse side for designation)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.

☒ RENEWAL.

☐ CHANGE OF ADDRESS.

☐ FORMER OWNER.

☐ CHANGE OF OWNERSHIP (Date) _____

NAME

Standard Liquor Stores Inc.

7581

CHECKS MUST BE CERTIFIED

Sworn to and subscribed before me this 20th day of July, 19 40
 I swear (or affirm or acknowledge) that the above statements are true and correct and the special-tax stamp herein applied for is to cover only the business indicated above and at the location specified.

/s/ THOS. A. HARRISON

Notary Public My Comm. 7/1/39

(Official title or signature of witness—see paragraph 2, reverse side)

Check	Dollars	Cents
Certified check		
Post Office M. O.		

*Check and form of payment NOT used. Make payment payable to "Collector of Internal Revenue." Enter amount in above space.

Sec. - Treas.

(State whether individual owner, number of firm, or if officer of corporation, give title)

(Signed) LELAND P. KING

Received by "Collector" _____

This return, properly executed, must be in the hands of the Collector of Internal Revenue **PAID TO NEW MEXICO** with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

16-17724 U. S. GOVERNMENT PRINTING OFFICE

[List of special-tax payers and instructions are printed at page 226.]

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1945

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

11723

(Stamp number)

Name Standard Liquor Stores Inc., d.b.a. Heidelberg Inn

Aug. 2, 1941

(Date of issue)

Business address

Hobbs

(Street and number, or rural route)

(City or town)

Lee

(State)

Aug. 1, 1941

(Date of issue)

Kind of tax R L D

July

(Month)

1942

(Year)

(See list on reverse side for designation)

Show by X in one of the following squares the nature of the application: not shown

☐ FIRST APPLICATION.

☐ RENEWAL.

☐ CHANGE OF ADDRESS (Date)

☐ CHANGE OF OWNERSHIP (Date)

FORMER OWNER

Standard Liquor Stores Inc.

NAME

HOME ADDRESS

with name Roswell, N. J.

27 50

27 50

Sworn to and subscribed before me this 26th day of July, 1942, at the location specified.

/s/ SYLVA V. MEYERS

Notary Public

(Official title or signature of witness—see paragraph 2, reverse side)

Received by Collector

This return, properly executed, must be in the hands of the Collector of Internal Revenue at the close of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

[List of special-tax payers and instructions are printed at page 226.]

U. S. GOVERNMENT PRINTING OFFICE

16-17724

ALBUQUERQUE NEW MEXICO

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1940

SPECIAL-TAX RETURN (SEE INSTRUCTIONS ON BACK)

Name Standard Liquor Stores, Inc. "Hollywood Club"
(Print name, followed by trade name)
Business address Hardin Hotel Hobbs (City or town) Lea (County) New Mexico (State)
Kind of tax Retail Liquor Dealer for period June 30, 1940 to June 30, 1941
(See list on reverse side for designation)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION. ☐ CHANGE OF ADDRESS (Date) August 1940

☒ CHANGE OF OWNERSHIP (Date) August 1940

NAME

Standard Liquor Stores, Inc.

FORMER OWNER

Roswell

Sworn to and subscribed before me 29th day of July, 1940

7s/ THOS. A. HARRISON

Notary Public My 1943 exp.

(Official title or signature of witness—see paragraph 2, reverse side)

Received by Collector

I swear (or affirm or acknowledge) that the above statements are true and correct and the special-tax stamp herein applied for is to cover only the business indicated above and at the location specified.

Cash	Certified check	Post Office M. O.
Dollars		Cents

*Once out term of payment NOT used.
*Make payment payable to "Collector of Internal Revenue." Enter amount in above space.

SAC—Treas.

(State whether individual owner, partnership, firm, or if owner of corporation, give title)

(signed) JELAND P. KING

This return, properly executed, must be in the hands of the Collector of Internal Revenue at ALBUQUERQUE NEW MEXICO with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

16-17724 U. S. GOVERNMENT PRINTING OFFICE

[List of special-tax payers and instructions are printed at page 226.]

(SEE INSTRUCTIONS ON BACK)

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1960

Standard Liquor Stores Inc., d.b.a. Hollywood Club

(Print name, followed by trade name)

Business address

History

1

New York

(Street and number, or rural route)

(City of New York)

(County)

Kind of tax

R L D

for period

ATnp

1961

to June 30, 1972.

Show by X in one of the following equations the nature of the application: not shown

☐ **First Application.**

RENEWAL

☐ CHANGE OF OWNERSHIP (Date) _____

Former Owner

WAVE

Standard Liquor Stores Inc.

Received full 1000 10/10/11
The sum of \$1000.00

7th Dec 1941

Sworn to and subscribed before me this _____ day of _____, 19____.

26th day of July 1968

SYTYA V. MEYERS

Notary Public. My Comm. exp.

Служба

Title or signature of witness

Received by Collector:

Leland P. King, Secretary

(State whether individual owner, number of firms, or if officer of corporation, give title)

This return, properly executed, must be in the hands of the Collector of Internal Revenue at **ALBUQUERQUE, NEW MEXICO** with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

14-17794

[List of special-tax payers and instructions are printed at page 226.]

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1943

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

21686

(Stamp number)

Name James A. Daily Central Bar
(First name, followed by trade name)
Business address 202 S. Second St. Tuamocari Quay New Mexico
(Street and number, or rural route) (City or town) (County) (State)
Kind of tax Retail Liquor Dealer for period July 1940 to June 30, 1941
(Also list on reverse side for description) (Month) (Year)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.☒ RENEWAL.☐ CHANGE OF ADDRESS (Date)☐ CHANGE OF OWNERSHIP (Date)

FORMER OWNER

NAME

CHECKS MUST BE CERTIFIED
See instructions on back
See instructions on back

Sworn to and subscribed before me this
7th day of June, 1940

1/s/ CLAUDE C. TAYLORNotary Public, Quay Co. NM

(Official title or signature of witness—see paragraph 2, reverse side)

Received by Collector

JAMES A. DAILY

(signed)

Individual owner.

7568

(State whether individual owner, number of days, or if other)

This return, properly executed, must be in the hands of the Collector of Internal Revenue at ALBUQUERQUE, NEW MEXICO with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

[List of special-tax payers and instructions are printed at page 226.]

Form 11
TREASURY DEPARTMENT
Internal Revenue Service
Revised July 1940

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

Name Central Bar (Print name, followed by trade name)
Business address 202 S. Second St.,
(Street and number, or rural route) Tucumcari
(City or town) N. Mex.
(State)
Kind of tax Retail Liquor Dealer for period 7 - 1941 (Month) to June 30, 1942 (Year)
(Also list on reverse side)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.

☒ CHANGE OF OWNERSHIP (Date) _____

☐ CHANGE OF ADDRESS _____

☐ RENEWAL.

☐ FORMER OWNER _____

NAME _____

27-508

Sworn to and subscribed before me this _____ day of _____, 1941.

/s/ TOM L. LAWSON

Notary Public My Comm. exp. _____

(Obtain title or signature of witness on paragraph 2, reverse side)

Received by Collector _____

(Signature of Collector)

(Signature of Owner)

(Signature of Notary Public)

(Signature of Witness)

(Signature of Collector)

(Signature of Owner)

(Signature of Notary Public)

(Signature of Witness)

(Signature of Collector)

(Signature of Owner)

(Signature of Notary Public)

(Signature of Witness)

This return, properly executed, must be in the hands of the Collector of Internal Revenue at ALBUQUERQUE, NEW MEXICO with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

16-15784 U. S. GOVERNMENT PRINTING OFFICE

[List of special-tax payers and instructions are printed at page 226.]

11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
REVISED MAY 1940

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

Name Irma Todd

Yucca Bar

(Print name, followed by trade name)

Business address

(Street and number, or rural route)

Carrizozo

(City or town)

Lincoln

(County)

N M

(State)

Dec 9 1941

(Date of issue)

Dec 9 1941

(Entered in record book)

Kind of tax Retail Liquor for period Nov. 1941 to June 30, 1942
(See list on reverse side for description) (Month) (Year)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.

☐ RENEWAL.

☐ CHANGE OF ADDRESS (Date)

☒ CHANGE OF OWNERSHIP (Date) Nov. 24, 1941 FORMER OWNER Standard Liquor Stores

NAME

IRMA TODD

HOME ADDRESS

Carrizozo, N M

Sworn to and subscribed before me this

3rd. day of Dec., 1941

/s/ JOHN EMERSON HALL

Notary Public

(Official title or signature of witness, see paragraph 3, reverse side)

Received by Collector

I swear (or affirm or acknowledge) that the above statements are true and correct and the special-tax stamp herein applied for is to cover only the business indicated above and at the location specified.

Dollars	Cents
18	34

Stamp and form of receipt NOT used. Make endorsement applicable to "Collector of Internal Revenue." Enter amount in above space.

(Signed) IRMA TODD

7885

ALBUQUERQUE, NEW MEXICO

This return, properly executed, must be in the hands of the Collector of Internal Revenue at the close of the month in which liability is incurred in order to avoid penalties. Checks with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks must be certified.

application on time

U. S. GOVERNMENT PRINTING OFFICE
16-17754

[List of special-tax payers and instructions are printed at page 226.]

SPECIAL-TAX RETURN
(SEE INSTRUCTIONS ON BACK)

COPY

145571

(Stamp number)

July 28, 1943

(Date of issue)

July 31, 1943

(Entered in record book)

Name Standard Liquor Stores Inc., d.b.a. Cantina Bar

(Print name, followed by trade name)

Business address 107 East 3rd St.,

(Street and number, or rural route)

Roswell, N. M.

(City or town)

N. M.

(State)

for period July 1, 1943 to June 30, 1944

(Year)

Kind of tax R. L. D.

(See list on reverse side for designation)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.

☒ RENEWAL.

☐ CHANGE OF ADDRESS (Date) _____

FORMER OWNER

Denver, Colo.

Roswell, N. Mex.

Roswell, N. Mex.

Roswell, N. Mex.

Roswell, N. Mex.

Oran C. Dale, Vice-Pres.

Legend P. King, Sec. Treas.

Sworn to and subscribed before me this

20th day of July 19 43

(Signed by: W. L. Lile)

Notary Public

(Official title or signature of witness—see Com. Reg. 1-221-46)

Received by Collector _____

This return, properly executed, must be in the hands of the Collector of Internal Revenue at Albuquerque, N. Mex.

with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Checks

must be certified.

I certify that this is a true and correct copy.

Therese Connell, Notary Public

(List of special-tax payers and instructions are printed at page 226.)

I swear (or affirm or acknowledge) that the above statements are true and correct and the special-tax stamp herein applied for is to cover only the business indicated above and at the location specified.

Signed by: Oran C. Dale

(Signed)

5/27/43

Five President Partner

(State whether individual owner, joint owner, or partner in corporation.)

Cash _____

Certified check _____

Post Office M.O. _____

Other _____

27 50

18-17734

18-17734

18-17734

18-17734

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1940

COPY

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

145572
(Stamp number)

Standard Liquor Stores Inc., d.b.a. Central Bar

Name

Business address

202 S. 2nd St.,
(Street and number, or rural route)Tucumcari
(City or town)Quay
(County)N. Mex.
(State)July 23, 1943
(Date of issue)July 31, 1943
(Entered in record 10)July 1, 1943 to June 30, 1944
(Month) (Year)

Kind of tax

E. L. D.
(See list on reverse side for designation)

for period

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.☒ RENEWAL.☐ CHANGE OF ADDRESS (Date) _____

FORMER OWNER

Francisco Lopez

Denver, Colo.

Roswell, N. M.

Roswell, N. M.

Leland P. King, Secy. Treas.

Sworn to and subscribed before me this

20th day of July, 1943

(Signed by: W. L. Lile)

Notary Public

(Official title or signature of witness—see

Com. Exp. 1/21/48

Received by Collector

Signed By: Oran C. Dale

Vice-President Partner

8/27/43

Albuquerque, N. Mex.

This return, properly executed, must be in the hands of the Collector of Internal Revenue at the time of payment of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Check with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Check must be certified. I certify that this is a true and correct copy. *Francisco Lopez*

List of special-tax payers and instructions are printed at page 226.

SPECIAL-TAX RETURN
(SEE INSTRUCTIONS ON BACK)

COPY

82139

145573
(Stamp number)

July 28, 1943
(Date of issue)

July 31, 1943
(Entered in recent 10)

Name Standard Liquor Stores Inc., d.b.s. Dexter Bkr.
(Print name, followed by trade name)

Business address Monroe Street, Dexter Chaves New Mexico
(Street and number, or rural route) (City or town) (County) (State)

Kind of tax R. L. D. for period July 1, 1943 to June 30, 1944
(See list on reverse side for designation) (Month) (Year)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.

☐ RENEWAL.

☐ CHANGE OF OWNERSHIP (Date) Renewed 10/3/43

FORMER OWNER

Renewed 10/3/43

Denver, Colo.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Roswell, N. M.

Sworn to and subscribed before me this 20th day of July, 1943

Signed by: W. L. Lile
Notary Public
Com. Exp. 1/21/46
(Official title or signature of witness—see paragraph 3, reverse side)

Received by Collector

This return, properly executed, must be in the hands of the Collector of Internal Revenue at the time the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Check must be certified. I certify that this is a true and correct copy. Thy The Council, N. M.

Albuquerque, N. Mex.

Signed By: Oran C. Dale (signed)

Vice-President

(State whether individual owner, member of firm, or if officer of corporation, give title)

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1960

COPY

SPECIAL-TAX. RETURN
(SEE INSTRUCTIONS ON BACK)

5. 160

145574
(Stamp number)

July 23, 1943

July 31, 1943
(Entered in record 10)

Name Standard Liquor Stores Inc., d. b. a. Heidelberg Inn.
(Print name, followed by trade name)

Business address 300 S. Turner St., Hobbs Lea New Mexico
(Street and number, or rural office) (City or town) (County) (State)

Kind of tax R. L. D. for period July 1, 1943 to June 30, 1944
(See list on reverse side for designation)
(Month) (Year)

Show by \bar{X} in one of the following squares the nature of the application:

☐ **FIRST APPLICATION.**

RENEWAL

☐ CHANGE OF ADDRESS (Date)

FORMER OWNER

☐ CHANGE OF OWNERSHIP (Date)

~~James L. Lavery, Pres.~~

Dinner Date
 Dinner by Address

Oran C. Dale, Vice-Pres.

Roswell, N. M.

~~Ireland P. King, Sec. - Treas.~~

Roosevelt N. M.

Sworn to and subscribed before me this
20th day of July 1943

Signed by: W. L. Lilo
Notary Public

My Com. Exp. 1/21/46
(Official title or signature of witness—see
Paragraph 2, reverse side)

Signed By: Oran C. Dale

Vice-President

State whether individual owner, number of firm, or if officer of service (then state date)

Received by Collector

Albuquerque, N. Mex.

This return, properly executed, must be in the hands of the Collector of Internal Revenue at

void penalties. Check...

U. S. GOVERNMENT PRINTING OFFICE: 1967 O 344-101

List of special-tax pavers and instructions are printed at page 226.]

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1940

C O P Y

SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

145575
(Stamp number)

July 23, 1943
(Date of issue)

July 31, 1943
(Entered in record 10)

Name Standard Liquor Stores, Inc., d.b.a. Hollywood Club
(Print name, followed by trade name)

Business address Harden Hotel, Hobbs Lea
(Street and number, or rural route) (City or town) (State) (Country)

Kind of tax E. L. D. for period July 1, 1943 to June 30, 1944
(See list on reverse side for designation) (Month) (Year)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.

☒ RENEWAL.

☐ CHANGE OF ADDRESS (Date) _____

☐ FORMER OWNER.

☐ CHANGE OF OWNERSHIP (Date) _____

James E. Levers

Rolland E. Levers, President,

Oran C. Dale, Vice-Pres.

Leland P. King, Sec. Treas.

Sworn to and subscribed before me this

20th day of July, 1943

(Signed by: W. L. Lile)

Notary Public

(Official title or signature of witness—see paragraph 2, reverse side)

Com. Exp. 1-21-46

Received by Collector _____

I swear (or affirm or acknowledge) that the above statements are true and correct and the special-tax stamp herein applied for is to cover only the business indicated above and at the location specified.

Signed By: Oran C. Dale
(Signed)

Vice-President
(Specify whether individual owner, member of firm, or if officer of corporation, give title)

Cash Dollars Cents
Certified check—
Post Office M.O.
27 50
I certify and term of payment NOT used.
of collection is "Collector of Internal Revenue." Enter amount in above space.

Albuquerque, N. Mex.

This return, properly executed, must be in the hands of the Collector of Internal Revenue at

with the amount of the tax, on or before the last day of the month in which liability is incurred in order to avoid penalties. Check

must be certified. I certify that this is a true and correct copy.

[List of special-tax payers and instructions are printed at page 226.]

Form 11
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised July 1943

COPY SPECIAL-TAX RETURN

(SEE INSTRUCTIONS ON BACK)

Name Standard Luggage Stores Inc., d.b.a. Smoke House,
(Print name, followed by trade name)
Business Address 124 N. Main St.,
Roswell
(Street and number, or rural route) (City or town)
Kind of tax R. L. D. for period July 1, 1943 to June 30, 1944
(See list on reverse side for designation) (Month) (Year)

145576
(Stamp number)

July 28, 1943
(Date of issue)

July 31, 1943
(Entered in record 10)

Show by X in one of the following squares the nature of the application:

☐ FIRST APPLICATION.

☒ RENEWAL.

☐ CHANGE OF ADDRESS (Date) _____

FORMER OWNER _____

☐ CHANGE OF OWNERSHIP (Date) _____

James Lee King
Rolland E. Levers, President

Denver, Colo.

Oran C. Dale, Vice-President

Roswell, N. M.

Roswell, N. M.

Sworn to and subscribed before me this

20th day of July, 1943

Signed by: W. L. Lile

Notary Public 12-46

(Official title or signature of witness—see paragraph 2, reverse side)

Received by Collector YEA

Signed By: Oran C. Dale

(signed)

Vice-President, Roswell

(Check whether individual owner, number of firms, or if owner of corporation, give title)

Albuquerque, N. Mex.

15-17751

INTERNAL REVENUE SERVICE

THE COMEDY

[List of special-tax payers and instructions are printed at page 226.]

Exhibit 71.

JM 8/7/42

Levers Brothers

Hobbs, N. M.

Roswell, N. M.

Clovis, N. M.

0181

Date.....19.....

Sold to.....

Terms.....

Ship to 3/31

No. Cases	Size	Brand	Serial No.
-----------	------	-------	------------

	Crystal Rent	80.00	
Hollywood	2/28/3/12	72.00	

\$152.00

Given to P E L 3/31/38

\$10.00 Bal Rent

Crystal Bar to Los By

F E L 4/2/38

Salesman..... Signed.....

Tax Roll
1935

Exhibit 72.
Tax Receipt

Office of County Treasurer and Collector, Lea County, N. M. No. 4421
Lovington, New Mexico, November 18, 1936

Received From Forrest E. Levers

Eighteen & 61/100 Dollars, \$18.61

In Payment of All Taxes Levied in the Year 1935, Delinquent
scribed Property, to-wit:

Dec. 1, 1935
May 1, 1936

on the following De-

Description of Real Estate and Improvements	Blk or Sec. Twp. Rge. Acres	Valuation	Distribution	Amount Tax
Lot 11.	35	350.00	State and County	12 19
			Cattle Sanitary	
			Sheep Sanitary	
			Hog Cholera	
Original Hobbs.				
Palace Bar.			School District No. 16	71
			School District No.	
			Municipal Tax—	
			Lovington	
Improvements		400.00	Hobbs	3 64
Plant, Tools, Machinery			New Hobbs	
Furniture, Equipment			Jal	
Merchandise				
Horses and Mules				
Cattle				
Swine				
Sheep and Goats				
Personal Property				
Penalty for Non-Rendition				
Total Valuation		750.00	Penalty and Interest	2 07
Exemption			Costs	
Net Full Valuation		750.00	Total Tax	18 61

Original

Tax Roll Page 149

Tax Roll Line 24

Tax Cash Page

In receiving checks in pay-
ment of taxes, the County
Treasurer acts only as a col-
lecting agent. All checks are
subject to final payment. In
case of check being lost in
transit or returned for any
reason whatsoever this re-
ceipt becomes null and void.

D. C. BERRY,
Treasurer & Collector.

By G. D. J., Deputy.

Exhibit 73.

Contract

350 This agreement made and entered on this the fourth day of April, 1938, by and between Standard Liquor Stores Inc., a corporation of Roswell, New Mexico, party of the first part; and H. A. Stokes of Hobbs, New Mexico, party of the second part.

Witnesseth: That the party of the first part agrees to contract to the party of the second part, the management of its retail liquor store, known and described as the "S.L.S. Bar" and situated at 121 Carlsbad Street, in Hobbs, New Mexico, for the three months beginning April first, 1938 and ending June thirty, 1938, on the following terms and for the considerations hereinafter set forth.

The party of the second part agrees to pay to the Standard Liquor Stores Inc., the sum of One Hundred Dollars monthly, payable in advance; and the party of the first part agrees to accept this sum in payment.

The party of the second part agrees to make all payments due to the Federal Government, the State of New Mexico and the County of Lea, for Social Security, Unemployment Compensation, Sales and Merchandise Taxes, whenever such taxes are due. The party of the second part further agrees to pay the rent on said store property, whenever it becomes due. The party of the second part agrees to incur no indebtedness against said business, without the knowledge and consent of the party of the first part. The party of the second part still further agrees to carry in stock and to sell only such brands of beer, ale, wines and liquors, as shall be agreed upon by the party of the first part.

It is mutually agreed that any profits over and above the cost, including the above mentioned expenses; and any other business expense which may be incurred, shall be owned solely by the party of the second part.

Witness our hands and seals this 4th day of April 1938.

STANDARD LIQUOR STORES, INC.

By LELAND P. KING, Secretary

H. A. STOKES

Witness:

WM. J. WILSON

ELFEGO LUCERO

Exhibit 74.

*\$1885.43

Paid 8-9-37 Cr #15182

*Words and figures in italics appear in handwriting across face of note.

1885.43

Roswell, New Mexico, February 23, 1937

351 On Demand after date, without grace, for value received, I, we, or either of us promise to pay to the order of Levers Brothers

Eighteen Hundred Eighty five and 43/100 Dollars with interest at the rate of per cent per annum, payable semi-annually from Date until paid. All interest due shall draw interest the same as the principal and in case of default in the payment of any interest payment then the whole principal sum shall become due and collectable and ten per cent additional on amount of principal and interest unpaid for attorney's fee if placed in the hands of an attorney for collection. The drawers and endorsers hereof, severally waive presentment for payment, notice of non-payment, protest and notice of protest of this note.

STANDARD LIQUOR STORES, INC.

By LELAND P. KING

Secretary & Treasurer

Payable at

Roswell, New Mexico

S.L.S. Bar

Exhibit 75.

Credit Memorandum

Original

8-9 1937

Name S. L. S. Inc.

Address Roswell N. M.

In Account With
Levers BrothersRoswell, N. M.
Phone 500Clovis, N. M.
Phone 202Hobbs, N. M.
Phone 202Distributors of.
Blatz Products—Fine Wines and Liquors

Invoice No.	Description	Amount
-------------	-------------	--------

Your account is credited as follows:

Ledger Cr Balance	\$1,850.00
Discount by agreement	\$ 35.43

1885.43

(H)

Thanks J S

15182

"Serving Southeastern New Mexico"

in 76

10,000¹⁰⁰

Roswell, New Mexico

Jan 25th 1937

after date. The value received hereon your receipt and protest.

I have either of us jointly and severally promised to pay to order of

The First National Bank of Roswell

for the sum of ten thousand and no/100 Dollars

with interest at the rate of 8 per cent per annum from maturity of this note until paid, with ten per cent additional discount on payment of this note for collection in the hands of any other party. The foregoing words and contents of this note may be extended or amended from time to time by any one or more of the undersigned without the assent of the others provided that after maturity the proper way apply any funds in any possession belonging to any of us to the payment of this note.

Respectfully signed at the Bank of Roswell, N. M.

STANDARD LIFE & ACCIDENT INSURANCE CO.

J. H. HARRIS (Vice President)

W. H. HARRIS (Sec. & Treas.)

Witness my hand and seal this 25th day of January 1937

No. 57829 Jan 25-37

Exhibit No. 30

ENDORSEMENTS

DATE PAID TO INTEREST PRINCIPAL BALANCE

For value received hereby
witness hands of protest and
endorsement and guarantee
payment of the within note.

RECEIVED

476

10,000.00

Index

Dec 25th 1137

Power of attorney of us jointly and severally promise to pay the note of

The First National Bank of Roswell

[illegible]

Louis, France, 3 Apr.
 Security
 No 57829. Jan 7. 25. 37

STANDARD MOTOR STORES, INC.
BY John J. [Signature] (Vice President)
BY John J. [Signature] (Sec. & Treas.)

Exhibit No. 30

ENDORSEMENTS

DATE	PAID TO INTEREST	PRINCIPAL	BALANCE
------	------------------	-----------	---------

for value received. *RECEIVED*

RELEAS

64 77

\$4500⁰⁰

Roswell, N. M., June 25th 1927

Four months after date. The value hereof was my own and purchased
I am, or rather, if in reality and actually promise to pay the notes of

The First National Bank of Roswell

Forty five hundred and no/100 Dollars
with interest of 8 per cent per annum from maturity of the note and with ten percent
additional discount on payment of the note in the hands of the bank. The holder with all the
drawers agrees that this note may be assigned to any person or persons for all or part of the amount of it, and may be assigned
of us without notice to any of the other signers and that after maturity the assignee or assignees may pay the note in
disposition belonging to any of us to the payment of this note.

Signed at the First National Bank of Roswell, N. M.

John J. Jones, Jr.

Secretary

STANDARD BANKING CO., INC.
BY *[Signature]* (Vice Pres.)
[Signature] (Sec. & Treas.)

No. 37030 Due 5-25-27

Exhibit No. 31

ENDORSEMENTS

DATE	PAYEE	AMOUNT	PERCENT	BALANCE

For value received hereby
waive notice of protest and
acceptance and guarantee
payment of the within note.

Pl. Lums

Exhibit 78.

August 9, 1939

Mr. Frank Kirk, Clovis.

355 Dear Frank—We have been dunned by a bill from Clovis Refrigeration Company for repairs on the Beer Box; and have referred them to you.

Of course, as we are not collecting any rental on the fixtures, for the use of them it is expected that the store will keep them in repairs. This is customary.

Have been wanting to get up to see you, but have been rushed lately and Ray has had to do all of the visiting for the firm. He told *be* that he had a nice *seesion* with you and spent more than 65c this time.

Best regards

Exhibit 79.

**Same letter to the Harden & S.L.S. Bars*

**Matter in italics appears in handwriting on photostatic copy.*

January 19, 1937

Worth Bar, Hobbs, New Mexico.

Attention: Mrs. Billie Smith

356 Dear Mrs. Smith: Unless you get authorization from our Roswell office do not make any purchases of any liquor from any wholesaler other than Levers Brothers of Hobbs, New Mexico, with whom our company has satisfactory credit arrangements. If you need any items not handled by Levers Brothers kindly advise the writer at Roswell, and if in our opinion you need same we will order for you through the Roswell office.

For bonded bar whiskies we want you to use U.D.I. 90 proof, Canadian Original and Pan #5,—For your cheap bar whiskies use Our Private Bar, Country Club and King Bar, all of which are handled by Levers Bros. We find that our other stores are well pleased with these brands, and as the wholesale price is lower on these brands we believe it will help our stores to show a bigger profit.

When checking any coin machines you have in your place

of business please include along with your report the operators division check, and also make a note of the amount of collections on your report so we will know just how the machines are running.

Also, on your reports be sure and send in the cash register realings and tape.

We trust that you will see that these instructions are carried out.

Yours very truly,

STANDARD LIQUOR STORES, INC.

By _____

Sec. & Treas.

Exhibit 80.

April 14, 1937

Worth Bar, Hobbs, N. M.

357 Dear Mrs. Smith:—Your letter of the other day was received with the missing daily report.

In regard to the case of Canadian Club, it was finally agreed for you to handle it. This took some *pursuasion*, as they felt that it was an opposition line. However, I argued that it should add customers and they finally agreed, with the understanding that it be handled in a way that would not interfere with the sale of their lines. In other words, not to push it at their expense.

I hope that it will help to increase your trade.

Yours very truly

Exhibit 81.

Memorandum

358 The license on the SLS Bar is in the name of the Standard Liquor Stores—therefore, the Standard Liquor Stores will be responsible for all unpaid bills created by that place, as long as Opal and Slim Lyons run the bar we were not worried about them running accounts against

the place, but since the bar is now changing management, there must be an understanding between the new manager and the Standard Liquor Stores that no outside bills for merchandise will be paid unless authorized and o.k.'d by the Standard Liquor Stores—This must be strictly adhered to, as we cannot take the chance of having bills run up against this store and have to pay them when the license expires. Also, it must be strictly understood that this bar is to only sell the beer specified by the Standard Liquor Stores and are to push the sale of all liquor handled by Levers Brothers.

*Sales Tax—

S. S. Tax—

Bills Paid—Opal—

*Matter in italics appears in handwriting on photostatic copy.

Exhibit 82.

April 8, 1938

Elson & Company, Carlsbad, N. M.

359 Gentlemen:—This is to notify you that we have turned over the management of of our "S.L.S. Bar" in Hobbs, to Mr. H. A. Stokes. Under the terms of our contract with him, we will not be responsible for any accounts owed by him, or incurred by him in running the business.

Yours very truly

STANDARD LIQUOR STORES, INC.

By

Auditor

Exhibit 83.

April 8, 1938

Ilfeld & Company, Albuquerque, N. M.

360 Gentlemen:—We have just made a contract with Mr. H. A. Stokes to take over the management of our "S.L.S. Bar" in Hobbs. Under its terms, we are not to be

held responsible for any debts which Mr. Stokes may incur in running this bar.

Yours very truly

STANDARD LIQUOR STORES, INC.

By

Auditor

Exhibit 84.

February 28, 1938.

Mr. Rolland E. Levers, Rocky Ford, Colo.

361 Dear Rolland:—Enclosed please find some minutes of meetings for your signature. Kindly get them back as soon as is convenient.

With best regards to Mrs. Levers and yourself, I am

Very truly yours

Exhibit 85

October 24, 1938

National Cash Register Company, Roswell, New Mexico.

Attention Mr. S. O. Austin:

362 Gentlemen:—We have been informed that *your* have taken possession of a cash register which was being used in our Hollywood Bar in Hobbs.

The history of this machine is as follows:

The Standard Liquor Stores Inc. leased the Radio Cafe in Clovis to Martin Cranfil, selling the fixtures and equipment. A mortgage was taken on this equipment and fixtures, and has not been paid to date by Cranfil. This cash register mentioned above, was part of the equipment and was mortgaged with the other items.

It seems that you sold Cranfil another register, taking in payment our mortgaged cash register and thereby, establishing our equity in the new one. In view of these facts, our directors have instructed me to demand that you return

the said register to the Hollywood Club Bar. Their viewpoint is that you have unlawfully possessed yourself of this machine and that it is up to you to return it. When this is done, future handling of this can be discussed. The point I have been instructed to stress is that you should not have possessed yourself of this register without recourse to due process of law.

Yours very truly

STANDARD LIQUOR STORES, INC.

By

Auditor

Exhibit 86.

November 21, 1939

Mr. Ernest Bridges, Hobbs, N. M.

363 Dear Ernest:—In accordance with our talk over the phone this morning, we want to put it in writing so that you will have a complete understanding of the requirements about buying.

As you are aware, the Standard Liquor Stores are operated by Mr. Rolland E. Levers, who is a brother to Levers Brothers. Naturally, he expects our stores to trade, whenever possible, with his brothers. As they carry a full line of American and Scotch liquors, we can get practically anything the retail trade asks for within different price levels.

We know that occasionally a customer asks for some particular brand, which none of our stores carry, but we find in our other stores, that it is possible to get him to buy a substitute in the Schenley line of merchandise. It is complete and has everything, in all grades, and at all price levels. The warehouse now has a full line of Scotch, including Johnny Walker, Ballantine, Teacher's, King's Ransom, Black and White, Royal Club, Dunbar and Black and White Scot.

In October the Green Lantern in Roswell had the following record:

Mdse Sales	\$ 2,825.42
Bought from Warehouse	1,723.39
Bought from others	223.78

The October record of Hollywood Club Bar is as follows:

Mdse Sales	\$ 1,530.77
Warehouse purchases	487.94
Other purchases	334.94

364 — Computing *your* total purchases for October, the amount bought from outsiders, figures 40.7%. If the amount of outside purchases the Green Lantern made in the same month, were figured at this percentage, they would have bought \$792.50 from outside firms. Instead, they bought only \$ 223.78, on sales of \$ 2,825.42. In percentage this was only 11.4%. As the sale of cigars and other items outside of liquor, is greater in the Green Lantern, the difference in the percentage of outside purchases, is greater than *than* these two figures show.

This difference is too great and naturally is not satisfactory from the viewpoint of the owners. They expect it to be cut down and for that reason, want to be consulted whenever you feel that you ought to carry something outside of our regular lines. They also want all merchandise of whatever brand, to be bought only from the Warehouse, when it is carried by the Warehouse. Let me know in a case of something the Warehouse does not carry and I will be glad to cooperate with you.

We realize that sometimes a customer insists upon one certain

(Illegible)

buyers into taking a bottle of Old Schenley Bond, instead of Old Taylor or some other bonded liquor, by talking it up. We are now selling more Old Schenley than all *others* bonded liquors combined. It's our best seller next to Cream of Kentucky. It's cheaper than the other brands and as good as anything on the market. We have a lot of regular buyers for it who used to ask for Taylor or Grandad.

The same thing applies to the Blatz line. We know that Hobbs is a better Bud town than Roswell is, but we are con-

verting a lot of Bud drinkers into Old Heidelberg fans, by asking them to try a bottle of O.H. If he asks for a bottle of beer, we ask him if he wants Old Heidelberg or Private Stock and do not mention the Bud. Let him bring that up.

365 Now that you have a fuller understanding of the wishes of the Standard Liquor Stores in regard to this matter, we hope that we will have your full cooperation about any unnecessary outside buying.

I am enclosing an amended statement of the October business, which includes the invoice of October 31st, received by you on November first, and not included in your inventory.

Best regards

Yours very truly

Exhibit 87

June 20, 1937

Mr. R. E. L. Harris, Hollywood Club, Hobbs, N. M.

366 Dear Mr. Harris:—In connection with making a change in the Hollywood Bar, of which I spoke while in Hobbs the last time, I think that it is advisable that you do so at once.

There is no question that Sam Newsom has outlived his usefulness to the Company. No man can drink steadily and attend to his job. That is, attend to it properly. We receive so many complaints about this particular objection to his work, which we have verified by observation, that there is no doubt that he should be let out.

Please *take* steps to get some one else as soon as possible, to replace him. On account of his long connection with the Company, we think that it would be a good idea to give him a week or possibly two week's salary, to give him a chance to look around for another job.

If all of the stores are to be continued, it will be necessary to run them on a profitable basis. We cannot get this result in any branch until we get down to brass tacks and clean house wherever it is found to be necessary.

3

Will be out there about Wednesday and hope that you will have arranged for a change by that time. With best regards, I am

Yours very truly

Exhibit 89

Palace or S.L.S. Bar, Hobbs, New Mexico

Purchases of Distilled Spirits as Shown on the 52-B Records on File in the Office of the District
Supervisor, Denver, Colorado

W. L. D.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Wine Gallons
1935													
Levers Brothers				42.00	30.90	57.90	55.50	81.00	104.40	159.75	220.95	89.50	841.90
Robert Porter & Sons				87.80	19.30								107.10
O. M. Sparks Co.							12.00		15.00				27.00
Other W.L.D.													None
1936													
Levers Brothers	90.75	99.33	137.01	135.65	144.07	108.70	82.82	118.56	67.12	93.13	70.13	103.27	1250.54
Badger Herring Sales					6.00								6.00
Chas. Hfeld Co.										7.00			7.00
Other W.L.D.													None
1937													
Levers Brothers	65.46		69.70	45.87	33.42	25.16	43.40	40.26	36.15	42.01	40.55	44.30	486.28
Badger Herring Sales	6.00							3.00	16.50	18.00	10.50	30.60	84.60
Elson & Company										5.24		17.25	22.49
Chas. Hfeld Co.						3.00	8.75	13.50	8.25	10.45	15.75	17.70	77.40
Robert Porter & Sons								6.75	21.00	17.37	25.50	29.01	99.63
Other W.L.D.													None
1938													
Levers Brothers	41.65	46.43	57.63										145.71
Badger Herring Sales	12.00		21.00										33.00
Elson & Company	19.20	7.50	7.50										34.20
Chas. Hfeld Co.	3.24	6.62	1.12										10.98
Robert Porter & Sons	14.10	18.75	21.11										53.96
Other W.L.D.													None

*Figures not available in February, 1937.

Exhibit 91.

Crystal Bar, Monument, New Mexico

Purchases of Distilled Spirits as Shown on the 52-B Records on File in the Office of the District
Supervisor, Denver, Colorado

W. L. D.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Wine Gallons
1936													
Levers Brothers					134.63	33.75	16.08	23.25	39.90	113.71	34.23	90.24	485.79
Robert Porter & Sons								6.00					6.00
Other W.L.D.													None
1937													
Levers Brothers	59.48		64.88	26.60	33.50	21.00	12.00	8.25	29.30	12.33	16.35	19.35	303.04
Badger Herring Sales Co.										6.38	3.00	3.00	12.38
Chas. Hfeld Co.						1.47				9.25	3.00	3.00	16.72
Robert Porter & Sons											15.23		15.23
Other W.L.D.													None
1938													
Levers Brothers	12.50	10.85	12.75	7.85	10.38	6.00							60.33
Badger Herring Sales	5.25		15.00	6.00									26.25
Chas. Hfeld Co.	3.00			3.00									6.00
Robert Porter & Sons			11.67		6.01								17.68
Other W.L.D.													None

*Figures not available for February, 1937.

Exhibit 92.

Worth Bar, Hobbs, New Mexico

Purchases of Distilled Spirits as Shown on the 52-B Records on File in the Office of the District
Supervisor, Denver, Colorado

W.L.D.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Wine Gallons
						1935							
Levers Brothers										30.75	29.75	86.75	147.25
Other W.L.D.													None
						1936							
Levers Brothers	16.50	89.64	71.00	81.35	123.92	76.57	59.91	65.00	50.42	124.51	126.37	127.95	1013.14
Chas. Hfeld Co.											8.70	19.00	27.70
Other W.L.D.													None
						1937							
Levers Brothers	74.97	*	96.08	58.77	49.06	39.06	30.11	40.78	51.20	35.49	53.46	80.18	609.16
Chas. Hfeld Co.	1.50	*		3.45	4.87	1.75	2.65	7.35	3.88	3.00	1.15		29.60
Other W.L.D.													None
						1938							
Levers Brothers	58.99	56.69	47.83	27.03	25.77	20.05							236.36
Chas. Hfeld Co.	1.25				.40								1.65
Other W.L.D.													None

*Figures not available for February, 1937.

Exhibit 116.

Green Lantern, Roswell, New Mexico

Purchases of Distilled Spirits as Shown on the 52-B Records on File in the Office of the District
Supervisor, Denver, Colorado

W. L. D.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Wine Gallons
1935													
Levers Brothers				62.25	49.87	52.75	12.00	27.00	57.75	98.20	116.95	156.85	633.62✓
Other W.L.D.													None
1936													
Levers Brothers	146.85	311.37	121.80	112.22	158.40	85.44	117.25	111.98	123.58	202.59	170.81	179.56	1841.85✓
Other W.L.D.													None
1937													
Levers Brothers	133.43	124.43	123.24	81.22	119.42	89.57	94.00	107.60	133.46	129.19	143.86	188.25	1467.67✓
Chas. Hfeld Co.				1.50				1.20		1.20			3.90✓
Robert Porter & Sons											3.00	6.00	9.00✓
Other W.L.D.													None
1938													
Levers Brothers	147.32	74.56	56.04	54.37	45.17	69.95	110.59	30.13	92.92	77.18	103.08	157.00	1018.31✓
Other W.L.D.													None
1939													
Levers Brothers	86.24	89.09	101.15	83.28	58.24	48.65	37.46	78.00	60.38	141.20	76.20	120.85	980.74✓
Robert Porter & Sons				3.00					1.95	2.10	2.48		9.53✓
Other W.L.D.													None
1940													
Levers Brothers	77.75	36.50	94.34	26.70	61.18	78.40	41.81	57.95	41.73	116.71	112.89	109.64	855.60✓
Robert Porter & Sons	2.10												2.10✓
Other W.L.D.													None
1941													
Levers Brothers	90.22	73.82	64.00	59.30	54.70	43.13	46.75	57.22	93.20	42.98	36.80		662.12✓
Chas. Hfeld Co.											5.12		5.12✓
Robert Porter & Sons											6.30		6.30✓
Other W.L.D.													None
1942													
Levers Brothers	43.10	21.00	28.50	13.00	16.95	9.00							131.55
Anchor Liquor Co.			12.00										12.00
Chas. Hfeld Co.	38.75	56.12	60.55	51.34	52.65	48.05							307.46
Robert Porter & Sons	30.25	32.25	32.40	12.60	19.20	12.60							139.30
Other W.L.D.													None

Note: Green Lantern owned by Clyde Roberts during this period.

Exhibit 123.

Hollywood Club, Hobbs, New Mexico

Purchases of Distilled Spirits as Shown on the 52-B Records on File in the Office of the District Supervisor, Denver, Colorado

W. L. D.	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Wine Gallons
1935													
Lavers Brothers								57.00	56.20	99.70	47.70	75.60	223.00
Elson & Co.												15.90	15.90
Robert Porter & Sons									12.00		18.00	7.20	37.20
O. M. Sparks Co.												32.40	32.40
Other W.L.D.													None
1936													
Lavers Brothers	41.40	45.55	70.57	100.34	44.46	26.85	42.05	64.33	68.23	69.83	71.16	70.98	715.64
Elson & Co.					9.00								9.00
Robert Porter & Sons	18.00			10.80	13.50	12.00							54.30
O. M. Sparks Co.				10.80	17.40	47.40							45.60
Other W.L.D.													None
1937													
Lavers Brothers	56.51		65.51	52.14	47.57	44.34	29.78	52.19	51.46	69.19	60.01	59.91	608.61
Chas. Hfield Co.				3.90	6.05	9.10	3.75	5.39	11.39	12.48	1.85	7.04	54.65
Other W.L.D.													None
1938													
Lavers Brothers	56.33	41.44	65.44	36.49	25.93	28.64	39.84	32.41	31.52	60.53	57.71	50.60	526.88
Chas. Hfield Co.					.75				3.00	3.00			6.75
Robert Porter & Sons											28.85	3.00	31.85
Other W.L.D.													None
1939													
Lavers Brothers	67.58	52.23	53.95	20.90	28.33	25.20	15.68	45.07	22.99	46.98	42.83	37.47	459.21
Elson & Co.				4.25									4.25
Chas. Hfield Co.		8.70	4.80	2.70									18.20
Robert Porter & Sons	1.50	3.00	5.40	1.13			1.50	7.05		2.25	2.10	8.16	32.09
Other W.L.D.													None
1940													
Lavers Brothers	47.27	47.07	54.94	48.92	22.81	24.20	44.52	20.29	30.17	48.12	40.82	42.40	471.53
Anchor Liquor Co.	2.40												2.40
Elson & Co.												5.40	5.40
Chas. Hfield Co.	1.88	1.87	1.38		.75	2.25	.75	3.75	1.20	1.50			15.33
Robert Porter & Sons		1.38	1.13							1.75			4.26
Other W.L.D.													

* Figures not available for February, 1937.

Exhibit 93.

Operating Statement

Standard Liquor Stores, Inc.

d. b. a.

Confidential

Dec.

Central Bar
Tucumcari, N. M.

Month of 19 Days, 1941

Sales		\$1792.57
Inventory 12/9/41	\$ 0	
Purchases:		
Levers Brothers	\$2940.41	
Others	\$ \$2940.41	
Total	\$2940.41	
Less Inventory 12/31/41	\$1906.84	
Cost of Goods Sold	\$1033.57	\$1033.57
Gross Income		\$ 759.00
Gross Percentage Mark-up on Cost of Goods Sold	73.43%	
Expenses:		
Ice	\$ 2.00	
Advertising	\$ 31.25	
Repairs	\$	
Laundry	\$ 2.37	
Rent	\$ 40.00	
Lights, Fuel and Water	\$ 33.94	
Salaries	\$ 200.92	
License	\$ 50.00	
Supplies	\$ 33.82	
Telephone & Teleg	\$.05	
Sales Tax	\$ 35.85	
Social Security	\$ 10.05	
Miscellaneous Expense	\$ 37.26	
	\$ \$ 477.51	
		\$ 281.49

Gain—~~Loss~~ (Strike out word not applicable)

Exhibit 94.

Operating Statement

Standard Liquor Stores, Inc.

d. b. a.

Month of Feb., 1942

Central Bar
Tucumcari, N. M.

Sales \$2056.78

Inventory, 1/31/42 \$1584.93

Purchases:

Levers Brothers \$1669.25

Others \$..... \$1669.25

Total \$3254.18

Less Inventory 2/28/42 \$1804.29

Cost of Goods Sold \$1449.89 \$1449.89

Gross Income \$ 606.89

Gross Percentage Mark-up
on Cost of Goods Sold 41.86%

Expenses:

Ice \$.20

Advertising \$ —

Repairs \$ 6.51

Laundry \$ 2.31

Rent \$ 60.00

Lights, Fuel and Water \$ 45.76

Salaries \$ 264.57

License \$ 50.00

Supplies \$ 51.16

Telephone & Teleg. \$ 1.20

Sales Tax \$ 52.91

Social Security \$ 12.20

Miscellaneous Expense \$ 1.81

\$..... \$ 548.63

\$ 58.26

Gain—Loss (Strike out word not applicable)

Exhibit 95.

Operating Statement

Standard Liquor Stores, Inc.

d. b. a.

Central Bar
Tucumcari, N. M.

Month of March, 1942

Sales		\$2212.70
Inventory 2/28/42	\$1804.29	
Purchases:		
Levers Brothers	\$1485.36	
Others	\$.....	\$1485.36
Total	\$3289.65	
Less Inventory 3/31/42	\$1935.60	
Cost of Goods Sold	\$1354.05	\$1354.05
Gross Income		\$ 858.65
Gross Percentage Mark-up on Cost of Goods Sold	63.41%	
Expenses:		
Ice	\$	
Advertising	\$ 8.16	
Repairs	\$.75	
Laundry	\$ 2.66	
Rent	\$ 60.00	
Lights, Fuel and Water	\$ 39.61	
Salaries	\$ 264.57	
License	\$ 50.00	
Supplies	\$ 49.55	
Telephone & Teleg	\$.90	
Sales Tax	\$ 44.25	
Social Security	\$ 10.58	
Miscellaneous Expense	\$ 19.74	
Ex Exp & Atty fees	\$ 57.37	\$ 608.14
	\$	
		\$ 250.51

Gain—Loss (Strike out word not applicable)

Exhibit 96

Operating Statement

Standard Liquor Stores, Inc.

d. b. a.

Central Bar
Tucumanari, N. M.

Month of April, 1942

Sales			\$2412.15
• Inventory 3/31/42		\$1935.60	
Purchases:			
Levers Brothers	\$1805.66		
Others	\$	\$1805.66	
Total		\$3741.26	
Less Inventory 4/30/42		\$2249.39	
Cost of Goods Sold		\$1491.87	\$1491.87
Gross Income			\$ 920.28
Gross Percentage Mark-up on Cost of Goods Sold		61.68%	
Expenses:			
Ice	\$		
Advertising	\$ 1.00		
Repairs	\$		
Laundry	\$ 2.27		
Rent	\$ 60.00		
Lights, Fuel and Water	\$ 32.74		
Salaries	\$ 268.12		
License	\$ 50.00		
Supplies	\$ 74.32		
Telephone & Teleg	\$ 1.25		
Sales Tax	\$ 48.24		
Social Security	\$ 13.41		
Miscellaneous Expense	\$ 90.23		
	\$		\$ 641.78
			\$ 278.50
Gain— Loss (Strike out word not applicable)			

Exhibit 97.

Certificate As to the Payment of Capital Stock of
Smoke House, Inc.

376 The location of the principal office in New Mexico is Roswell, New Mexico, and the name of the agent in charge thereof, and upon whom process against this corporation may be served is Claude J. Neis.

In accordance with the provisions of Section 32-128, Chapter 32, of the 1929 Codification of the Laws of New Mexico, we, Rolland E. Levers, President, and J. Clifford Hearn, Treasurer of Smoke House, Inc., a corporation existing under the laws of the State of New Mexico, do hereby certify that \$12,500, being the amount of the capital stock with which said Company commenced business, as authorized by certificate of incorporation filed in the office of the State Corporation Commission, on the 6th day of April, 1935, has been fully paid in, \$6250.00 thereof the purchase of property and \$6250.00 in cash.

.....
President

LELAND P. KING, Treasurer.

State of Colorado, County of _____, ss.

Rolland E. Levers, President, of Rocky Ford, Colorado, being duly sworn, on his oath, deposes and says: That the foregoing certificate by him signed.

Exhibit 98.

Organization of "Smoke House, Inc."

Meeting of the Persons Named As Directors in the Articles of Incorporation of the "Smoke House, Inc."

377 Pursuant to the waiver of notice of meeting, a meeting of the persons named as directors in the Articles of Incorporation of the "Smoke House, Inc." was held this the 26th day of April, 1935, at 2 o'clock P.M., in the office of Claude J. Neis, Attorney at Law, Roswell, New Mexico.

At this meeting all the persons so named were present, namely:

Rolland E. Levers, of Rocky Ford, Colorado by his attorney in Fact, J. Clifton Hearn.

J. Clifton Hearn of Hagerman, New Mexico, Leland King of Roswell, New Mexico.

Mr. Hearn was called to the chair and Mr. King was requested to act as temporary secretary.

Mr. Hearn announced that the certificate of incorporation of the Company, having been duly issued from the office of the State Corporation Commission of the State of New Mexico, the object of the meeting was to organize the company by the election of officers to act until the adoption of the code of by-laws by the stockholders and the election of directors thereunder, as required by law.

Mr. Rolland E. Levers was nominated by Mr. Hearn for president, no other nominations being made, on motion of Leland King, and duly seconded, the ballot was dispensed with and Mr. Levers was unanimously elected president of the Company.

378 Mr. Hearn then nominated Leland King for secretary-treasurer, no other nominations being made on motion, duly seconded, the ballot was dispensed with and Mr. King was unanimously duly elected secretary of the company.

The president then suggested that as all the stock holders were present in person or represented by proxy, further proceedings for the meeting be suspended and a stockholders meeting be called and held forthwith.

On motion, duly seconded, it was unanimously

Resolved: That a meeting of the stockholders of the Company be and is hereby called to be held this the 26th day of April, 1935 at the hour of 2:30 P.M. o'clock, P.M., in the office of Claude J. Neis, Roswell, New Mexico.

The motion duly seconded, the meeting adjourned.

Approved:

J. CLIFTON HEARN,
Vice-President.

LELAND KING,
Secretary.

We, the undersigned, the stockholders and subscribers for stock of the "Smoke House, Inc." being the owners and holders of all the subscribed capital stock of said company, viz:

Rolland E. Levers, J. Clifton Hearn, Leland King

do her by give our written consent to the holding of this the first stockholders' meeting of the "Smoke House, Inc." this the 26th day of April, 1935, at the hour of 2:30 o'clock, P.M. at the office of Claude J. Neis, Roswell, New Mexico and we do hereby certify that all the stockholders and subscribers for stock of said company are at the meeting now here present, either in person or by proxy.

In Witness Whereof, we have hereunto set our names this the 23rd day of April, 1935.

ROLLAND E. LEVERS
By J. CLIFTON HEARN,
Attorney in Fact.
J. CLIFTON HEARN
LELAND KING

Minutes of the First Stockholders' Meeting of the
"Smoke House, Inc."

379 Pursuant to a waiver of notice and the above written consent, this, the first meeting of the stockholders of the "Smoke House, Inc.," was held on this the 26th day of April, 1935, at 3 o'clock, P.M., at the office of Claude J. Neis, Roswell, New Mexico.

Present: All the subscribers and all of the issued shares, owned, held and represented as follows, viz:

Rolland E. Levers	94 shares
J. Clifton Hearn	4 shares
Leland King	2 shares

being all the shares of the subscribed capital stock of the company.

Mr. Hearn, Vice-president in the chair.

The secretary read the minutes of the meeting of the persons named as directors in the articles of incorporation, which, on motion duly seconded, were approved.

380 The vice-president announced that the first business of the meeting was the adoption of the code of by-laws for the government of the company and its officers.

Mr. Hearn presented a code of by-laws which were read and on motion of Mr. King, after being duly seconded, they were adopted as the by-laws of the company and ordered to be engrossed in the company's book of by-laws.

The vice-president then announced that pursuant to the articles of incorporation, the following named persons were to act as directors of the corporation for the first three months of its existence and until their successors are regularly elected and qualified:

Rolland E. Levers, Rocky Ford, Colorado.

J. Clifton Hearn, Hagerman, New Mexico.

Leland King, Roswell, New Mexico.

There being no further business before the stockholders, on motion, the meeting adjourned.

Approved:

J. CLIFTON HEARN,

Vice-president.

—LELAND KING,
Secretary.

Minutes of Directors' Meeting "Smoke House, Inc."

Mr. J. Clifton Hearn presided at the Directors' meeting and Mr. Leland King acted as secretary.

On motion of Leland King, duly seconded, Mr. Rolland E. Levers was unanimously elected president of the "Smoke House, Inc." and on motion, duly seconded, Mr. J. Clifton

Hearn was elected vice president of the company and of the Board of Directors, whereupon Mr. Hearn directed the secretary to report the proceedings of the Board.

381 The secretary was then directed to read to the Board a code of by-laws adopted by the stockholders at their first meeting held this the 26th day of April, 1935.

The secretary then read the by-laws as the same are engrossed on pages 1 to 10 of the company's book of by-laws.

Thereupon, on motion of Mr. King, duly seconded, it was unanimously

Resolved: That the code of by-laws adopted by the stockholders at their first meeting held on the 26st day of April, 1935 and engrossed in full on pages 1 to 10 of the book of by-laws of this company, be and hereby are approved and adopted as the by-laws of the Company and, be it further

Resolved: That each member of the Board of Directors and the secretary of the company, be and hereby are requested to subscribe their names to the said by-laws, and certify the same in that certain book to be kept in the office of the company and known as and called the book of by-laws of the "Smoke House, Inc.,"

On motion, duly seconded, it was unanimously

Resolved: That the office of the company be and it is hereby fixed and located at Suite 216, J. P. White Building, in the City of Roswell, and County of Chaves, New Mexico.

On motion, duly seconded, it was

Resolved: That the secretary be and he is hereby authorized and directed to procure a book of blank stock certificates for the use of the company, and also a seal with
382 the following impress: "Smoke House, Inc.", Incorporated April 9th, 1935", or other words and figures of similar import.

Thereupon the meeting adjourned.

LELAND P. KING, Secretary.

Exhibit 99.

383 Regular meeting of the board of directors of Smoke House, Inc., was held on the 9th day of April at the office of the Company in Roswell, New Mexico, at 10:00 a. m.

Present:

J. C. Hearn
Leland King

J. C. Hearn presided.

Motion was made, duly seconded and carried that a license be taken out in the name of this Company for the Hollywood Bar at Hobbs.

The meeting then adjourned.

LELAND P. KING, Secretary.

Exhibit 100.

384 A regular meeting of the board of directors of Smoke House, Inc., was held in the office of the Company in Roswell, New Mexico, at 10:00 a. m., on July 9th, 1935.

Present:

J. C. Hearn
Leland King

J. C. Hearn presided

A motion was made, seconded and duly carried that this Company take out a license in its name for the Worth Bar at Hobbs.

Thereupon the meeting adjourned.

LELAND P. KING, Secretary.

Exhibit 101.

Minutes of the Stockholders Special Meeting.

Pursuant to waiver of notice, the stockholders of the Smoke House, Inc., of Roswell, New Mexico, held its special meeting in the office of Claude J. Neis, Room 216 J. P. White Building, Roswell, New Mexico at 11 o'clock a. m., on the — day of September, 1935.

The following stockholders were present in person or by proxy:

J. Clifton Hearn
Leland King, and
Rolland E. Levers, by proxy,

and the said persons represented all of the stock owned by said Company.

The meeting was called to order by J. Clifton Hearn, who stated the object of the meeting and thereupon on motion, J. Clifton Hearn was elected chairman of the meeting and by consent, Leland King was appointed secretary. The secretary then presented and read the waiver of notice pursuant to which the meeting was held. The same was ordered spread upon the minutes book to follow the minutes of the meeting. Thereupon, the chairman announced pursuant to the waiver of notice that the object of said meeting was for the purpose of changing the name of the corporation from the Smoke House, Inc., to Standard Liquor Stores, Inc., whereupon, there was offered an amendment to the certificate of incorporation of Smoke House, Inc., said amendment being as follows:

Be It Resolved: That the stockholders of the Smoke House, Inc., a corporation organized under the laws of the State of New Mexico on the — day of —, 1935, do hereby resolve and declare that it is advisable that the name of said corporation be changed to Standard Liquor Stores, Inc.,

Be It Further Resolved: That Article I, of the Certificate of Incorporation of Smoke House, Inc., be amended to read "that the name of the Corporation shall be Standard Liquor Stores, Inc."

On motion of Leland King, duly seconded, the foregoing resolution was adopted.

There being no further business before the stockholders and on motion, the meeting adjourned.

LELAND P. KING, Secretary.

Chairman.

Pursuant to directions in the preceding meeting the following papers and documents are here recorded as part of the minutes of said meeting:

1. Waiver of Notice of meeting.

2. Resolution.

LELAND P. KING, Secretary.

Exhibit 102.

Stockholders Assent to Change.

We, the subscribers, being all of the stockholders
387 of the Smoke House, Inc., having voting powers, having, at a meeting regularly called for the purpose, voted in favor of changing the name of said corporation to Standard Liquor Stores, Inc., do now pursuant to the statute, hereby give our written assent to said change.

Witness our hands and seals this the 8th day of October, 1935.

ROLLAND E. LEVERS 94 Shares.

4 Shares

LELAND P. KING 2 Shares

Exhibit 103.

A regular meeting of the Board of Directors of
388 Standard Liquor Stores, Inc., was held in the office of the company in Roswell, New Mexico, on October 9th, 1935, at 10:00 a. m.

Present:

J. C. Hearn

Leland King

J. C. Hearn presided.

A motion was made, duly seconded and carried that this Company take out a license in its own name for Pete's Bar in Clovis, dating from January 1st, 1936.

The meeting then adjourned.

LELAND P. KING, Secretary.

Exhibit 104.

Minutes of Director's Special Meeting.

389 Pursuant to written call, the Board of Directors of the Smoke House, Inc., of Roswell, New Mexico, held a special meeting in the office of Claude J. Neis, Room 216 J. P. White Building, Roswell, New Mexico, at 10 o'clock a. m. on the 11th day of October, 1935, the following named members of the Board were present:

J. Clifton Hearn, Vice-President and Treasurer,
Leland King, Secretary, and
Rolland E. Bevers, by proxy.

The meeting was called to order by J. Clifton Hearn who stated the object of the meeting and thereupon, on motion of Leland King, he was elected chairman of the meeting, and by consent, Leland King was appointed Secretary. The secretary then presented and read the call and notice pursuant to which the meeting was held. The same were ordered spread upon the minute books to follow the minutes of the meeting.

Thereupon the chairman announced that the object of the call was for the purpose of changing the name of the corporation from Smoke House, Inc., to Standard Liquor Stores, Inc.

On motion of Leland King, duly seconded, it was resolved that the secretary call a meeting of the stockholders to take such action as may be advisable and necessary with reference to the passage of a resolution by said stockholders that the name of the corporation be changed as hereinabove suggested.

300

On motion, the meeting adjourned.

LELAND P. KING, Secretary.

..... Vice-President.

Pursuant to directions in the preceding minutes, the following papers and documents are here recorded as the minutes of said meeting.

1. Call of Meeting.

LELAND P. KING, Secretary.

Exhibit 105.

A special meeting of the Board of Directors of
391 Standard Liquor Stores, Inc., was called for and held
in the office of the Company, in Roswell, New Mexico,
on February 9, 1936, at 10:00 a. m.

Present:

J. C. Hearn
Leland King

J. C. Hearn presided.

A motion was made, seconded and duly carried that a
license be taken out in the name of this Company for Crystal
Bar, Monument, New Mexico, dating from March 1st, 1936.

The meeting then adjourned.

LELAND P. KING, Secretary.

Exhibit 106.

A special meeting of the directors of Standard
392 Liquor Stores, Inc., was held in the office of the Com-
pany in Roswell, New Mexico, on June 9th, at 10:00
a. m.

Present:

J. C. Hearn
Leland King

A motion was made, duly seconded and carried that li-

license be taken out in the name of this Company for the Green Lantern, Roswell, dating from July 1st, 1936.

A motion was made, duly seconded and carried, that a license be taken out in the name of this Company for the Palace Bar, Hobbs, dating from July 1st, 1936.

The meeting then adjourned.

LELAND P. KING, Secretary.

Exhibit 107.

393 The regular quarterly meeting of the Board of Directors of Standard Liquor Stores, Inc., was held in the office of the Company, 124 North Main Street, Roswell, New Mexico, on Tuesday, March 9, 1937, at 10:00 a. m.

Present:

J. Clifton Hearn

Leland P. King

Mr. Hearn presided.

The Secretary read the call for the meeting.

A motion was made, seconded and carried, that the Corporation purchase the Fixtures located in the Bonita Night Club, in Eunice, New Mexico; that the same be financed through the Lamac Store Fixture Company, Milwaukee, Wisconsin; that the Secretary-Treasurer execute the Company's note for the sum of one thousand six hundred and fifty dollars (\$1650.00); that said note be payable at the rate of fifty dollars monthly; and that the Corporation execute a Chattel Mortgage on said fixtures to Lamac Store Fixture Company for the sum of one thousand six hundred and fifty dollars; and that the Corporation also execute a Mortgage Deed for the sum of one thousand six hundred and fifty dollars (\$1650.00) to the Lamac Store Fixture Company, on the following described real estate.

Lot 7 in Block 4, South Eunice Addition in Lea County, New Mexico

both of said mortgages being security for the payment of said debt of one thousand six hundred and fifty dollars to the Lamac Store Fixture Company.

The meeting then adjourned.

J. CLIFTON HEARN,
Vice President.

LELAND P. KING,
Secretary-Treasurer.

Exhibit 108.

Special Meeting of Board of Directors.

Pursuant to written call, the Board of Directors of
394 Standard Liquor Stores, Inc., of Roswell, New Mexico, held a special meeting in the office of the Company, 124 North Main Street, Roswell, New Mexico, at 1:30 p. m., on Thursday, January 20th, 1938. The following Directors were present:

Rolland E. Levers

Leland P. King

Mr. Levers presided, and opened the meeting by stating the purpose of this meeting, which was to take such action as might be necessary and advisable, in accordance with the passage of a resolution of the stockholders of Standard Liquor Stores, Inc., at a special meeting held on this said day and date, and prior to this said meeting of the Board of Directors.

Upon a motion made by Mr. Leland P. King, regularly seconded, it was voted that the offer of Robert C. Prater, of Eight Thousand Five Hundred Dollars (\$8,500.00), be accepted for the following described real estate: Lot eleven, in Block thirty-five, Original Town of Hobbs;

(Terms: \$4000.00 Cash; \$4500.00 on or before Feb. 1, 1939; interest 5%.) and situated in the City of Hobbs, in Lea County, New Mexico.

The meeting then adjourned.

ROLLAND E. LEVERS,
President:

LELAND P. KING, Secretary.

Pursuant to directions in the preceding minutes, the following papers and documents are here recorded as the minutes of said meeting.

LELAND P. KING, Secretary.

Call for meeting.

Exhibit 109.

Minutes of Special Meeting of Stockholders.

395 Pursuant to written call, a special meeting of the Stockholders of Standard Liquor Stores, Inc., was held in the office of the Company, 124 North Main Street, Roswell, New Mexico, at 11 o'clock a. m., on the 20th day of January, 1938.

The following persons were present in person:

Rolland E. Levers, representing 94 shares

Leland P. King, representing 2 shares

The meeting was called to order by the President, Mr. Rolland E. Levers, who stated the purpose and object of the meeting. Upon a motion made by Leland P. King, regularly second and carried, it was voted to authorize the Board of Directors of Standard Liquor Stores, Inc., to negotiate a sale of the following described real estate, viz: Lot eleven, in Block thirty-five, Original Town of Hobbs

and situated in the City of Hobbs, in Lea County, New Mexico, for the sum of Eight Thousand Five Hundred Dollars (\$8,500.00); upon such terms as they may deem fit and advantageous to the best interests of this Company.

The meeting then adjourned.

ROLLAND E. LEVERS, President.
LELAND P. KING, Secretary.

Exhibit 110.

Special Meeting of Board of Directors.

Pursuant to written call, the Board of Directors of
396 Standard Liquor Stores, Inc., of Roswell, New Mexico, held a special meeting in the office of the Company, 124 North Main Street, Roswell, New Mexico, on December 26, 1939, at 1:30 P. M.

The following Directors were present:

J. Clifton Hearn
Leland P. King

Mr. Hearn presided, and opened the meeting by stating the purpose of this meeting was to authorize the negotiation and securing of a loan from the First National Bank of Roswell, New Mexico.

Upon a motion made by Mr. King and duly seconded the following resolution was passed and adopted:

"Be It Resolved, That the Secretary-Treasurer of this Corporation, or his successor in office, be and he is authorized for, on behalf of, and in the name of this Corporation to:

(a) Negotiate and procure loans from First National Bank of Roswell, New Mexico, up to an amount not exceeding Twenty-five Thousand Dollars (\$25,000.00) in the aggregate at any one time outstanding.

(b) Discount with said bank, commercial or other business paper belonging to this corporation, made or drawn by or upon third parties, without limit as to amount:

(c) Give security for any liabilities of this corporation to said bank by pledge or assignment or a lien upon any personal property, tangible or intangible, of this corporation, and

(d) Execute in such form as may be required by the banks all notes and other evidence of such loans, all instruments of pledge, assignment or lien and that none of the same shall be valid unless so signed and endorsed, provided, however,

that the endorsement of promissory notes may be effected by him.

"Resolved Further, that said bank be and is hereby authorized and directed to pay the proceeds of any such loans or discounts as directed by the persons so authorized to sign, whether so payable to the order of any of said persons in their individual capacities or not, and whether such proceeds are deposited to the individual credit of any said person or not:

"Resolved Further, That this resolution shall continue in force, and said bank may consider the holders of said offices and their signatures, respectively to be and continue to set forth in the certificate of the secretary of this corporation accompanying a copy of this resolution when delivered to said bank or in any similar subsequent certificate, until notice to the contrary is duly served on said bank."

397 The meeting *the* adjourned.

LELAND P. KING,
Secretary-Treasurer.

Pursuant to directions in the $\frac{1}{2}$ preceding minutes, the following papers and documents are here recorded in the minutes of said meeting.

LELAND P. KING,
Secretary-Treasurer.

Call for meeting.

Exhibit 111.

Annual Meeting of Board of Directors.

398 A meeting of the Board of Directors of Standard Liquor Stores Inc. was held immediately after the Annual Stockholders meeting, in the offices of the corporation, on Tuesday, July 9th, 1940.

Present:

Mr. Rolland E. Levers

Mr. Leland P. King

Mr. Oran C. Dale

Mr. Levers presided.

The meeting was called to order by Mr. Rolland E. Levers, who announced that the purpose of it, was to elect officers for the ensuing year. Mr. Levers then called for nominations.

Upon a motion being made by Mr. Dale and seconded by Mr. King, Mr. Rolland E. Levers was elected President unanimously.

A motion was then made by Mr. King nominating Mr. Oran C. Dale, for Vice President. Motion was seconded by Mr. Dale and Mr. Oran C. Dale was declared elected Vice President by unanimous vote.

Mr. Dale then nominated Mr. King for the combined office of Secretary-Treasurer. This motion was seconded by Mr. King and Mr. Leland P. King was declared elected Secretary-Treasurer unanimously.

The meeting then adjourned.

LELAND P. KING,
Secretary-Treasurer.

Exhibit 112.

Minutes of Annual Meeting of Stockholders.

399 Pursuant to written call, the annual meeting of the stockholders of Standard Liquor Stores Inc., was held in the office of the corporation, 124 North Main Street, in Roswell, New Mexico, on Tuesday, July 9th, at 1:30 P. M. 1940.

Present:

Rolland E. Levers	2 shares
Leland P. King	2 shares
Oran C. Dale	92 shares
E. C. Hearn	4 shares (by proxy)

Mr. Rolland E. Levers presided.

Mr. Levers opened the meeting and announced the purpose of it, which was for the election of a Board of Directors for the ensuing year. He stated that nominations were now in order.

Mr. Oran C. Dale made a motion nominating Rolland E. Levers. This motion was seconded by Mr. Leland P. King.

Mr. Oran C. Dale made a motion nominating Leland P. King. This motion was seconded by Mr. King.

Mr. Leland P. King made a motion that Oran C. Dale be nominated for Director. Motion was seconded by Mr. Dale.

The President then declared nominations closed and ordered that balloting take place, and appointed Messrs Dale and King as tellers. Ballots were cast and the tellers, after counting announced the following vote:

Rolland E. Levers	100 shares
Oran C. Dale	100 shares
Leland P. King	100 shares

The meeting then adjourned.

.....
.....
Secretary.

Exhibit 113.

Annual Meeting of Board of Directors

A meeting of the Board of Directors of the Standard Liquor Stores Inc., was held immediately after the Annual Stockholders meeting, in the offices of the corporation, on Tuesday July 8, 1941.

Present:

Mr. Rolland E. Levers,
Mr. Leland P. King,
Mr. Oran C. Dale.

Mr. Levers Presided.

The meeting was called to order by Mr. Levers and announced that the purpose of the meeting, was to elect officers for the ensuing year. Mr. Levers than called for nominations.

Upon a motion being made by Mr. King and regularly

seconded by Mr. Dale, Mr. Rolland E. Levers was elected President unanimously.

A motion then was made by Mr. King nominating Oran C. Dale for Vice-president. Motion was seconded by Mr. Dale who was declared elected Vice-president by unanimous vote.

Mr. Dale then nominated Leland P. King for the combined office of Secretary-Treasurer. This motion was seconded by Mr. King who was declared elected Secretary-Treasurer by unanimous vote.

The meeting adjourned.

ROLLAND E. LEVERS, President,
..... Secretary.

Exhibit 114.

Minutes of Annual Meeting of Stockholders.

401 Pursuant to written *callsent* out June 7, 1941, the annual meeting of the stockholders of the Standard Liquor Stores Inc., was held in the office of the corporation, 124 N. Main Street, Roswell, New Mexico, on Tuesday July 8, 1941, at 1:30 P. M.

Present:

Rolland E. Levers 2 shares
Leland P. King 2 shares
Oran C. Dale, 92 shares
J. Clifton Hearn 4 shares (by proxy)

Mr. Rolland E. Levers presided.

Mr. Levers opened the meeting and announced that it was called for the purpose of electing a Board of Directors for the ensuing year. He stated that nominations were in order.

Mr. Oran C. Dale made a motion nominating Rolland E. Levers. This motion was seconded by Leland P. King.

Mr. Oran C. Dale made a motion nominating Leland P. King. This motion was seconded by Mr. King.

Mr. Leland P. King made a motion nominating Oran C. Dale. This motion was seconded by Mr. Dale.

The President then declared the nominations closed and ordered that balloting take place, and appointed Messrs Dale and King as tellers. Ballots were cast and the tellers, after counting announced the following vote:

Rolland E. Levers 100 shares

Oran C. Dale, 100 shares

Leland P. King, 100 shares

The meeting adjourned.

ROLLAND E. LEVERS, President.

Secretary.

Exhibit 125.

Assignment.

413 I, the undersigned E. M. Gregory, hereby assign to the Standard *Liqueur* Store Inc. of Roswell, New Mexico, my Retail *Liqueur* *Licenses* No. 229, issued by the town of Dexter, New Mexico, dated April 1st. 1942 and expiring June 30th. 1942.

Signed E. M. GREGORY.

State of New Mexico, County of Chaves, ss.

On this the 28th. day of May, 1942, before me personally appeared E. M. Gregory, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

In Witness Whereof, I have hereunto set my hand and official seal the day and year first above written in this certificate.

BELLE W. HURST, Notary Public.

Dexter, N. M., May 28—42

My commission expires 9/14/42:

We hereby approve of the above assignment—

.....; Mayor.

H. C. GARRISON, Mayor.

Exhibit 126.

Know All Men By These Presents.

414 That Standard Liquor Stores, Inc., of Roswell, New Mexico, party of the first part, for and in consideration of the sum of One Dollar and other valuable consideration Dollars, lawful money of the United States, to them in hand paid, at or before the ensembling and delivery of these presents, by Lamac Store Fixture Company party of the second part, the receipt of which is hereby acknowledged, have bargained, sold, granted, transferred, assigned and conveyed, and by these presents do bargain, sell, grant, transfer, assign and convey unto the said party of the second part, its heirs, executors, administrators, successors and assigns

Equipment now at:

Old Heidelberg Inn, Hobbs, N. M. Consisting of:

1—20' Front Bar

1—20' Back Bar

2—Workboards

1—Zahm

2—Bottle Boxes

1—Novelty Box & Zahm

1—20' Foot Rail

10—Blue Stools

1—Bar Flap

1—10' #3CBB 2 section Temprite with stein washer and compressor

At Roswell Warehouse

1—Novelty Box

1—1½ HP Compressor & Nov. Box

At Faulkner's Cafe, Artesia, N. M.

1—20' Commodore Front & Back Bar

At Oscar Samuelson, Artesia, N. M.

1—1/3 HP Compressor

1—20' Front & Back Bar

1—Special Novelty Box with Elec. Ref.

1—6'6 Workboard with Bottle Box

- 1--2 Tap Zahn
- 10--Blue Leather Stools
- 10--Booths and Tables
- 1--Bottle Beer Box

At Ben Roten, Eunice, N. M.

- 1--Novelty Box with Zahn & Compresor

At Bonita Night Club, Eunice, N. M.

- 1--Novelty Box with Mech. Refrigeration
- 1--Workboard

At Palace Bar, Hobbs, N. M.

- 1--Front Bar and Back Bar
- 1--Foot Rail

At Harden Hotel, Hobbs, N. M.

- 1--Front Bar and Back Bar

10--Stools

1--Novelty Box

2--Zahn Units

2--Workboards

2--Expansion Coils, Fins, etc.

8--Lea. Chrome Chairs

8--Stools

2--36" Square Tables

At C. E. Ramsey, Clovis, N. M.

- 1--Electric Bottle Beer Cooler

At H. M. Townsend, Eunice, N. M.

- 1--Novelty Box

To have and to hold the same unto the said party of the second part, its heirs, executors, administrators, successors and assigns forever. And we do for our heirs, executors and administrators, covenant and agree to and with the said part of the second part, that we are the lawful owner of said property; that the same is free from all incumbrances, and that we have good right to sell the same as aforesaid, and will warrant and defend the said property hereby sold unto the said party of the second part, its heirs, executors, ad-

ministrators, successors and assigns, against the lawful claims and demands of all persons.

In Witness Whereof, we have hereunto set our hand and seal this 6th day of June, 1939

STANDARD LIQUOR STORES INC. (Seal)
By WM. J. WILSON, Auditor (Seal)

Signed and Sealed in Presence of

LELAND P. KING Sect Treas

Exhibit 127.

Roswell, New Mexico, June 6 1939

\$5,000.00

415 On Demand, after date, we promise to pay to the order of Lamac Store Fixture Company, or order, at Milwaukee, Wisconsin, at their offices located at 325-East Chicago Street, the sum of Five Thousand and 00/100 Dollars (\$5000.00), together with interest at six percent from date, for value received.

Until Demand, the maker shall have the privilege of making partial payments from time to time to apply on the said note, but the acceptance of such installment payments shall be without prejudice to the right of the payee to demand payment in full in accordance with the original terms of this note.

The makers, signers and endorsers of this note severally waive demand, notice and protest and agree to any extensions or partial payments, before or after maturity and agree that after maturity the time of payment may be extended from time to time by one or more of us, without the knowledge or consent of any of the other of us, and for such extension the liability of all parties shall remain as if no such extension has been made.

If this note is not paid at maturity and is placed in the hands of an attorney for collection, or in the event judicial proceedings are instituted to enforce collection thereof, the makers, signers and endorsers agree to pay an additional

ten per cent (10%) on the amount of the principal and interest unpaid as attorneys' fees.

STANDARD LIQUOR STORES, INC.
By WM. J. WILSON, Auditor.

Attested

LELAND P. KING Sec Treas

Exhibit 128

The State of New Mexico, County of Quay, ss.

416 These Presents Witnesseth:

That Elsie Conner Daily of Quay County, New Mexico, for and in consideration of the sum of Seventeen Hundred Forty-five and 15/100 Dollars to us in hand paid by Lever's Bros. of Roswell, New Mexico parties of the second part, the receipt of which is hereby acknowledged, and other valuable consideration, have sold and do hereby convey unto the said party of the second part, the following described personal property, to-wit: One back bar, one front bar, one gas refrigerator, one novelty beer box, one wash board and drain board, one ice box, one hot water tank, one gas heater 4 booths and 4 tables, one cash register, one fizz bottle, bar glasses and cock-tail fixtures, 3 clocks, together with all liquors, beers, wines, and cordials now in place, together with all increase of same, and all other articles and fixtures connected with what is known as the Central Bar in the stone building at the intersection of Center and Second Streets in Tucumcari, New Mexico

To Have and to Hold, All and singular, the said property unto the said party of the second part, and its legal representatives, and assigns forever.

This conveyance, however, is made and intended as a Mortgage, given to secure unto the said party of the second part and its representatives and assigns, the payment of certain sums of money owing and to become due to it from the said Elsie Conner Daily, as is evidenced by a certain promissory note of which the following is a substantial copy, to-wit:

Copy

Roswell, New Mexico, March 20, 1941

\$1,745.15

On Demand after date, without grace, for value received, I, we or either of us promise to pay to the order of Levers Brothers at The First National Bank of Roswell Seventeen Hundred Forty Five and 15/100 Dollars with interest at the rate of 8 per cent per annum from date until paid, interest payable semi-annually and 10 per cent additional on principal and interest unpaid for attorney's fees, if placed in the hands of an attorney for collection.

The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note.

ELSIE CONNER DAILY.

Due..... No.....

Post Office.....

Remarks:.....

party of the second part and its successors and assigns.

2. This Mortgage is intended to cover and shall include, convey and mortgage all of the increase of, from and to, the above described property during the existence hereof, and all accretions to said brand or brands.

3. If I, the said Elsie Conner Daily or my heirs, executors or administrators, shall well and truly pay off and discharge, or cause to be paid off and discharged, said indebtedness, and any and all extensions or renewals of same, or any part thereof, and all other indebtedness by me owing to said party of the second part, with all legal interest and charges thereon accruing, when the same become due and payable, then this instrument is to become null and void; otherwise it is to remain in full force and effect.

4. Until default is made in the payment of the debt hereby secured, or until the conditions hereof are otherwise broken, I, the said mortgagor is to have and to hold the possession of the said property and to use and enjoy the same and the revenues thereof; but should I make use of such possession,

or permit any other person or persons to make use thereof, so as in any manner to injure the said property or jeopardize or impair the rights of the said creditor or the security hereby given, then it shall be lawful for such creditor, either in person or by agent or attorney, to take immediate possession of all or any part of said property; and such creditor may at his option, at once declare such debt due and proceed with such property accordingly, or he may hold the same until the maturity of the said note and then proceed as is hereinafter provided.

Should it appear to said party of the second part, at any time hereafter, that the above described property is not, or after the delivery hereof becomes so it is not in value, quantity, quality or condition equal to or as good as at the time of the execution and delivery hereof, then said party of the second part may declare said note due, instant, and proceed accordingly; and hereby represent said property as above described and of the aggregate value of \$..... Should this party of the second part attach or otherwise seek to fix its lien on other property than herein described as further security for said debt, it shall not thereby waive its lien given hereby. No other or second mortgage, lien or incumbrance upon the property above described in favor of another than said party of the second part, shall be made or created without the written consent of said party of the second part.

417 5. In the event default is made in the payment of the said debt, or any part thereof, at maturity then it shall and may be lawful for, and I the said Elsie Conner Daily do hereby authorize and empower the said party of the second part and its assigns, either by officer, in person, or by agent or attorney, to enter my dwelling house, store, field, pasture, and such other place or places as such property may be placed in, and take and carry away the same, and, after notice given in the manner and form and for the time as is required by law in cases of sale of such property under execution, to sell the same in bulk or in parcels, at public vendue or private sale, for the best price obtainable, at which sale said party of the second part may become the purchaser, and to make the purchaser or purchasers thereof

a good and sufficient conveyance and title thereto, and to apply the proceeds thereof: First, to the payment of all costs, charges and expenses incurred in the taking, keeping, handling and sale of such property; Second, to the payment of all interest accrued on and all attorney's fees, costs and charges incurred on account of said debt; Third, to the payment of the principal sum due on the said debt; Fourth, to the payment and liquidation of any other debt or debts due or to become due the party of the second part from me, the said mortgagor and, Fifth, the remainder thereof, if any, shall be paid over to me or my heirs, legal representatives or assigns.

6. A bill of sale hereunder from the said party of the second part or any of its agents, officers, attorneys or assigns, as such, conveying the said property or any part thereof, shall be full and conclusive evidence and proof that all the terms and conditions herein have been fully complied with; and I hereby ratify and confirm any and all acts of the said party of the second part, its officers, agents, attorneys, and assignees, done under and by virtue hereof.

Signed and delivered this the day of
A. D. 1941.

Executed in the presence of witnesses thereto as follows:

.....
.....
.....
ELSIE CONNOR DAILY

The State of New Mexico, County of Quay, ss.

On this 21 day of March, 193—, before me personally appeared Elsie Connor Daily to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

Witness my hand and seal the day and year last above written.

DAVID S. BONEM, Notary Public
Quay County, N. M.

(Seal)

My commission expires June 8, 1942.

7500

No.

Chattel Mortgage

to

Filed for registration in my office at 2:20 o'clock P. M., on this the 25th day of March, 1941. Irene Kearns, County Clerk, Quay County, N. M. By Cora L. Breitenbach, Deputy. (Seal). Fee 25c.

Certificate of True Copy

#7500. Elsie Conner Daily to Levers Bros.

State of New Mexico, County of Quay, ss.

I, the Undersigned County Clerk within and for said County and State, do hereby certify that the foregoing copy of a Chattel Mortgage, together with the original thereof, was today presented to me for comparison, and that I have carefully compared said copy with said original and find the same to be a true and correct copy thereof.

Witness my hand and seal of office this 4th day of September 1942.

IRENE KEARNS, County Clerk.

By CORA L. BREITENBACH,
Deputy.

Exhibit 129.

In the Ninth Judicial District Court, Quay County, New Mexico. Standard Liquor Stores, Inc., a Corporation, Plaintiff; vs. James Daily and Elsie Daily dba Central Bar, Defendants. No. 7693.

Complaint.

418 Comes now plaintiff and alleges:

I

That the plaintiff is a duly organized New Mexico corporation engaged in the retail liquor business. That the de-

defendants are partners doing business under the name of the Central Bar, engaged also in the retail liquor business and maintaining a place of business known as the Central Bar on South Second Street, Tucumcari, New Mexico.

II

That on March 20, 1941, for a good and valuable consideration the defendant Elsie Daily, for a good and valuable consideration, made, executed and delivered to Levers Brothers a certain promissory note for the principal sum of \$1745.15, payable on demand and bearing interest at the rate of 8% per annum from March 20, 1941 until paid. That a copy of said note marked Exhibit A is attached hereto and made a part hereof.

That said note was so given by the said Elsie Daily represented a partnership obligation of the defendants James Daily and Elsie Daily dba as the Central Bar and was given for a good and valuable consideration advanced to said partnership by the said Levers Brothers.

III

That at the time of the execution of aforesaid note the defendant Elsie Daily, made executed and delivered to said Levers Brothers a *Chattle* Mortgage bearing even date with aforesaid note on certain personal property mentioned and described in said mortgage which property was then situate in Quay County, New Mexico, and owned by and in the possession of the defendants. That said mortgage was duly filed for record in the office of the County Clerk of Quay County, New Mexico, on March 25, 1941, at 2:20 o'clock P. M. as *chattle* mortgage # 7500 a copy of said Mortgage Marked Exhibit B being attached hereto and made a part hereof.

IV

That on September 25, 1941 the plaintiff for a good and valuable consideration negotiated aforesaid note to; and assigned aforesaid mortgage to, this plaintiff, and the plaintiff is now the sole owner of said note and the assignee of said mortgage.

V

That plaintiff has made due demand upon defendants and each of them for the payment of said note. That said defendants have wholly refused to pay said note or any part thereof and said note is due, owing and remains unpaid and this plaintiff is the lawful owner and holder of said note and mortgage.

VI

That aforesaid mortgage provides, among other things that, "In the event default is made in the payment of the said debt, or any part thereof, at maturity then it shall and may be lawful for the said party of the second part and its assigns, either by officer, in person, or by agent or attorney, to enter my . . . store. . . . and such other place or places as such property may be placed in, and take and carry away the same, and, after notice given in the manner and form and for the time as required by law in cases of sale of such property by execution, to sell the same. for the best price obtainable, at which sale the second party may become the purchaser."

VII

That the plaintiff has before the filing of this suit, duly demanded of the defendants the possession of said property so held and detained by the defendants and described in said mortgage and that the defendants have refused
420 to deliver said property mentioned in said mortgage or any part thereof. That the *defendant* still refuse to deliver the possession of the said property to this plaintiff.

VIII

That by reason of the provisions of said mortgage herein before referred to conditions of said mortgage have been broken by the defendants and each of them and the defendants wrongfully detain said property in their possession and the plaintiff is lawfully entitled to the possession of the property described in said mortgage; and that the right of action herein *accured* within one year. That the defendants have broken the conditions of the note herein marked Exhibit A by their refusal, neglect and failure to pay the

sums of principal and interest called for in said note when demanded to do so by the plaintiff.

IX

That by virtue of said *chattle* mortgage and the terms thereof, the plaintiff has a lien, a special ownership in, and the right to the immediate possession of all the property covered by said mortgage.

X

That the approximate value of said property is \$750.00 and that upon plaintiff's execution of the bond required by law, Writ of Replevin be issued for possession thereof.

Wherefore, Plaintiff prays that Replevin issue for the possession of aforesaid property, that an order be made that *plain* is entitled to possession of said property, that said property be ordered sold according to law and the proceeds applied as required by law and that plaintiff have judgment against the defendants in the amount of \$1745.15 together with interest at 8% to date and for all costs hereof and for reasonable attorneys fees and for such other and further relief as to the Court may seem just and proper.

STANDARD LIQUOR STORES, INC.

By WALTER L. LILE.

421 [Verification omitted.]

Exhibit 130.

In the Ninth Judicial District Court, Quay County, New Mexico. Standard Liquor Stores, Inc. a corporation, Plaintiff, vs. James Daily and Elsie Daily dba Central Bar, Defendants. No. 7693.

Answer

422 Comes now Elsie Daily and shows the Court:

1

The defendant admits the allegations in plaintiffs complaint except defendant denies that she has refused to deliver possession of the property described in alleged *chattle* mortgage to plaintiff. Defendant alleges that she has been

at all times and now is ready willing and able to deliver said property to plaintiff and hereby makes tender of delivery of all of said property to plaintiff.

Wherefore defendant prays the Court that plaintiff take nothing by its complaint and that all costs hereof be assessed against plaintiff.

JAMES DAILY and ELSIE DAILY,
dba Central Bar:
By ELSIE DAILY.

[Verification omitted.]

Exhibit 131.

In the Ninth Judicial District Court, Quay County, New Mexico. Standard Liquor Stores, Inc. a Corporation, Plaintiff, vs. James Daily and Elsie Daily dba Central Bar, Defendants. No. 7693.

Stipulation for Judgment

423 Comes now the defendant, Elsie Daily, partner in the firm composed of Elsie Daily and James Daily, doing business under the name and style of the Central Bar and the plaintiff, Standard Liquor Stores, Inc., by Walter L. Lile, its agent, and show the Court:

Whereas, the said partnership composed of Elsie Daily, doing business as the Central Bar, is justly indebted to the plaintiff on that certain promissary note, alleged in plaintiff's complaint, filed herein, in the sum of \$1745.15, together with interest at the rate of 8 per cent per annum from March 20, 1941 and said note remains just due, owing, and unpaid and,

Whereas, aforesaid note is secured by one certain Chattel mortgage, covering the following described personal property, to-wit:

One back bar, one front bar, one gas refrigerator, one novelty beer box, one washboard and drainboard, one icebox, one hot-water tank, one gas heater, four booths and four tables, one cash register, one fizz bottle, bar glasses and cocktail fixtures, three clocks, and such other articles and fixtures connected with what is known as the Central Bar, located at the intersection of Center and Second Streets in Tucumcari, New Mexico

and which said mortgage has been duly assigned to this plaintiff and.

424 Whereas, the defendants are the owner of one certain New Mexico retail liquor dealers' license, No. 604, executed in the name of Central Bar, James A. Daily and the holder of one certain Tucumcari City retail liquor license in the name of Central Bar, James A. Daily and,

Whereas, plaintiff has filed suit to foreclose its Chattel Mortgage against the defendants and the defendants, desiring to avoid incurring additional cost of litigation and acknowledging the debt to plaintiff.

It is now, therefore, stipulated and agreed:

1. That defendants, upon the execution of these presents, agree to peaceably deliver up possession of all the personal property described in aforesaid mortgage to plaintiff and at the same *time* to execute and deliver to plaintiff a good and sufficient Bill of Sale to all of said property.

2. Plaintiff agrees to execute and deliver to defendants a satisfaction of the aforesaid mortgage and to deliver to the defendant, Elsie Daily, the aforesaid mortgage note in the amount of \$1745.15 and to release the defendants from any and all further liability thereon. Plaintiffs further agree to pay the defendant, Elsie Daily, the sum of \$200.00 in cash.

3. The defendant, Elsie Daily, agrees to execute an assignment of both of aforesaid retail *liquor* license to the plaintiff.

In Witness Whereof, the parties have hereunto set their hands this 10th day of December, 1941.

STANDARD LIQUOR STORES, INC.

By WALTER L. LILE.

JAMES DAILY AND ELSIE DAILY DBA
CENTRAL BAR

By ELSIE DAILY.

Approved

.....
Judge of Ninth Judicial Court.

Exhibit 132

Bill of Sale.

425 Know all men by these presents that I, Elsie, Daily, partner in the firm composed of James Daily and Elsie Daily, doing business under the name and style of the Central Bar, for and in consideration of the covenants contained in that certain Stipulation for judgment, filed in District Court, Cause No. 7693, Civil Docket, Quay County, New Mexico, by and between Standard Liquor Stores and myself and the said firm have bargained and sold, and by these presents do grant, assign, and transfer, under the said Standard Liquor Stores Inc. the following:

One back bar, one front bar, one gas refrigerator, one novelty beer box, one washboard and one drainboard, one icebox, one hot-water tank, one gas heater, four booths and four tables, one cash register, one fizz bottle, bar glasses and cocktail fixtures, three clocks, and such other articles and fixtures connected with what is known as the Central Bar, located at the intersection of Center and Second Streets in Tucumcari, New Mexico.

Delivery whereof is at the date of these presents, made to the said Standard Liquor Stores Inc.

To have and to hold the same under the said Standard Liquor Stores Inc, its successors and assigns forever.

And I do for myself, my heirs, executors, and administrators, covenant and agree to and with the said Standard

Liquor Stores Inc. do warrant and defend the sale of the said goods, Chattels, and personal property unto the said Standard Liquor Stores Inc, its successors and assigns against all lawful claims.

In Witness Whereof, I hereunto set my hand and seal this 9th day of December, 1941, personally and as partner in the firm aforesaid.

JAMES DAILY, ELSIE DAILY, DOING
BUSINESS AS THE CENTRAL BAR.
By ELSIE DAILY

Exhibit 133

Assignment

426 Know All Men by These Presents that I, Elsie Daily, partner in the Firm composed of James Daily and Elsie Daily, dba Central Bar at Tucumcari, Quay County, New Mexico, personally and as attorney in fact for aforesaid James Daily, for myself and for the said James Daily, for and in consideration of the Covenants contained in that certain Stipulation For *Judgement* filed in the District Court for Quay County, New Mexico, Civil Number 7693, do hereby assign all our right title and interest in and to the following, to wit:

1. That certain New Mexico State Retail Liquor License issued to Central Bar, James Daily, bearing number 604.
2. That certain Tucumcari City Retail Liquor License issued to Central Bar, James Daily.

That I have attached hereto and by reference make a part hereof Power of Attorney by James Daily to the undersigned.

In Witness Whereof I have hereunto set my hand and seal and the hand and seal of the said James Daily this 9th day of December 1941.

JAMES DAILY
By ELSIE DAILY
Attorney in fact.
ELSIE DAILY

State of New Mexico, County of Quay, ss.

Comes now Elsie Daily to me personally known to be the person named in and who executed the foregoing Assignment and acknowledged the execution thereof by herself personally to be her free act and deed and the execution thereof in behalf of James Daily to be her free act and deed in behalf of said James Daily.

Notary Public, Quay
County, N. M.

My Commission Expires:

Exhibit 134

Chattel Mortgage No. 68541

From Alfred C. Wright

To Standard Liquor Stores, Inc.

Filed Aug. 20, 1938, 10:30 a. m.

427 Alfred C. Wright, mortgagor, of Clovis, New Mexico, party of the first part, for consideration of sum of Seventeen Hundred Fifty and no/100 Dollars mortgages to Standard Liquor Stores, Inc. of Roswell, party of second part, the following goods and chattels, to-wit:

Bar Equipment

1 20' Back Bar with Mirrors

1 " Front Bar Complete with 2-keg novelty box, 2-sets drains

All shelving now located in said building

1 Cigar Show Case about 2' x 6'

1 Plate Range (3 plates)

1 16" General Electric Exhaust Fan with Cooling System

1 Electric Leonard Refrigerator Serial #

1 National Cash Register Serial #

1 Stevens Cold Cash Electric Bottle Beer Box

1 Small Gum Case

1 Bread Box

1 Electric Toasters

5 Booths complete

All linoleum on Floor

All plumbing used in setting up bar and fixtures

All other equipment now in this location not herein mentioned the intentions of this chattel mortgage being to cover all equipment of whatever kind and description now in said building.

Assessories

The following list of *assessories* is to be included in this chattel mortgage to-wit:

12 10-oz Beer Glasses

96 " " "

4 8-oz Beer Glasses

12 6-oz Beer Glasses

12 4-oz Hi-Ball Glasses

12 4-oz Toddy Glasses

24 3-oz Claret Glasses

36 1-oz Whiskey Glasses

18 3-oz Wine Glasses

12 1-oz Pony Glasses

9 3-oz Cocktail Glasses

10 2-oz Stem Wine Glasses

6 5-oz Hot Toddy Glasses

10 4-oz Fizz Glasses

4 8-oz Fizz Glasses

12 16-oz McGinty Glasses

6 Mixing Glasses

1 Mixing Shaker

15 Hi-Ball Spoons

3 Mixing Spoons

1 Electric Mixer Complete with attachments

24 Soup Spoons

12 Teaspoons

16 Dinner Plates

24 Chili Brown Dishes

24 Pie Plates

2 Carving Knives

11 Forks

6 Knives

6 Forks

1 Steam Table complete with 2-hole gas plate, and three
crocks

24 Salt and Pepper Shakers

2 Soup Ladles

2 Potato Mashers

5 Squirt Bottles used on bar

1 Fizz Bottle

1 Tom & Jerry Bowl complete with 12 mugs

2 80-oz. Jumbo Glasses

1 Aluminum Percolator

1 5-Gal. Steam Kettle

1 Pretzel Bowl

All other glasses, towels, linens and other accessories used in said bar, the *intentiones* being to include in this chattel mortgage, all dishes, glassware, bar equipment, whiskey set-ups, used in the conducting of said bar business.

for the sum of Seventeen Hundred Fifty and No/100 Dollars Payable at the rate of \$30.00 per month, and should default be made in any of such payments then the whole amount becomes due and payable. Copy of note hereto attached.

\$1750.00

Roswell, New Mexico, June 22, 1938

427A. \$30.00 per month starting July 1, 1938, without grace, for value received, I, we, or either of us promise to pay to the order of Standard Liquor Stores, Inc. at The First National Bank of Roswell Seventeen Hundred Fifty and No/100 Dollars with interest at the rate of 6 per cent per annum from Date until paid, interest payable semi-annually and 10 per cent additional on principal and interest unpaid for attorney's fees, if placed in the hands of an attorney for collection.

The drawers and endorsers severally waive presentment for payment, protest and notice of protest and non-payment of this note.

Due..... No.....

ALFRED C. WRIGHT

Post Office,

Remarks:

MAE HOOD

County Clerk, Curry County

Clovis, New Mexico

Exhibit 135.

Release of Chattel Mortgage

428 The Undersigned, as Mortgagee under a certain Chattel Mortgage executed by Gladys London on the 13th day of March, 1941, and recorded in Book A-9, page L-13, of the Records of Lincoln County, New Mexico, does hereby certify that the indebtedness secured thereby and mentioned therein has been fully paid and satisfied and does hereby release and discharge all of the personal property mentioned in said Chattel Mortgage from the lien and operation thereof.

In Witness Whereof the said Mortgagee has signed and sealed this release on this the day of June, 1941.

LEVERS BROTHERS, as Mortgagee.

(Seal)

By FOREST E. LEVERS.

State of New Mexico, County of Chaves, ss.

On this day of June, 1941, before me personally appeared Levers Bros. by Forest E. Levers, as Mortgagee, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness my hand and seal on this the day and year first above written.

JAMES BRISTER, Notary Public
Lincoln County, New Mexico.

My commission expires 14 October 1941.

We certify that the foregoing page is a true photostat copy of release of Chattel mortgage No. 19351, and that on this page appears that part of the back of said release, showing endorsements thereon, together with the entry made by the County Clerk in Book A-9 of Chattel Mortgage Records of Lincoln County, New Mexico, at page 1-13, of said Chattel Mortgage No. 19351.

Dated at Carrizozo,
Lincoln County, New Mexico
this 13th day of August,
A.D. 1942.

LINCOLN ABSTRACT AND
TITLE COMPANY

Ernest R. Jones
President

[illegible]

#19351

RELEASE OF MORTGAGE

Leaves Bros. Trust

T₄

Gladys Lindon

STATE OF NEW MEXICO }
County of *Lincoln* }

I hereby certify that this testimony was
found for record on the 20 day of
June 1941

at 10:30 on Feb 2 M and was in the
~~and~~ in the A 9 of records of

Deeds and Conveyances page 2-13
on this 27 day of June
1941

Felix Casney
 and his wife, Rebecca
 Thelma Shaw

RECEIVED MAY 1965 BY 0011 007 00 07 0000 00 0 0-00-0000

[illegible]

Exhibit 136.

Bill of Sale and Assignment of Lease

430 Know All Men By These Presents, That I, Gladys London of Carrizozo, New Mexico, owner of the Yucca Cocktail Parlor and Bar, in consideration of the release of one Kerosene Servel Electrolux Refrigerator from that certain chattel mortgage recorded in Book A-9 of chattel mortgages at page L-13 in the office of the Clerk of Lincoln County, New Mexico, and in consideration of the agreement of the Standard Liquor Stores Incorporated to assume and pay all outstanding bills, accounts and obligations of the Yucca Cocktail Parlor and Bar, and of the rentals on the lease hereinafter mentioned, and for the further consideration of the sum of \$100.00 cash to me in hand paid by Standard Liquor Stores Incorporated, and for the further consideration of the release and satisfaction of the indebtedness of Gladys London to Levers Brothers as evidenced by a statement of account and a certain promissory note dated March 13, 1941, in the principal sum of \$504.88, and secured by the chattel mortgage above mentioned, do hereby sell, and assign unto Standard Liquor Stores, Incorporated, the following:

(1) The business owned and operated by me under the name of Yucca Cocktail Parlor and Bar in Carrizozo, New Mexico, including good will.

(2) All furniture, fixtures and equipment of every nature and description now located in said bar, (excepting the Servel Electrolux Refrigerator) including:

- 1—18 foot Back Bar
- 1—18 foot Front Bar
- 2 front bar extensions, about 4 foot long each
- 10 Leatherett Chrome Bar Stools
- 1 Back Bar work bench complete with set up
- 1—7 foot Kelvinator Beer Box complete with motor
- 1 McClaskey Register No. EL 32438
- 1—2 burner Gas Plate
- 1 Dearborn Butane Gas Stove No. 19 complete with all fittings and tank
- 1—18 foot brass rail
- 8 tables

32 wood chairs

1 Model 15 Dearborn Stove

7 hat racks

1 set deer horns, mounted on wood slabs.

All glass wear, towels and other back bar equipment

Complete stock of whiskies, beer, wines and liquors in the inventory amount of \$55.99.

(3). All lease hold rights under the lease on the building in which said business is operated from M. U. Finley, with the understanding that the said Standard Liquor Stores Incorporated is to pay all rentals, remaining to be paid under said lease.

(4) Assignment of State, Federal and Municipal liquor licenses now in my name, the same to be transferred to the Standard Liquor Stores Incorporated, the same being paid to July 1, 1941.

(5) The obligations and accounts of the Yucca Cocktail Parlor and Bar to be assumed and paid by the Standard Liquor Stores Incorporated are as follows:

Levers Brothers	\$338.66	
State Bureau of Revenue	15.60	plus interest and penalty
Empire Products	14.00	
Robert Porter	32.12 ⁰	
City Gas	7.96	

431 Other miscellaneous items and accounts not itemized.

To Have And To Hold, all and singular, the goods and chattels above bargained and sold unto the said Standard Liquor Stores Incorporated, its assigns and successors forever. And I, the said Gladys Loudon, for myself, my heirs, executors, administrators and assigns, all and singular, the said goods and chattels above bargained and sold unto the Standard Liquor Stores Incorporated, its successors and assigns, against myself and against all and every person whomsoever, shall and will warrant and forever defend.

In Witness Whereof, I have hereunto set my hand and seal this the 19 day of June, 1941.

..... (Seal)

Gladys Loudon

State of New Mexico, County of Lincoln, ss.

On this 19 day of June, 1941, before me personally appeared Gladys Loudon to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

JOHN EMERSON HALL, Notary Public.

My commission expires: August 11, 1942.

Exhibit 137.

9 July 1941.

Forest E. Levers, % Levers Brothers, Roswell, New Mexico.

432 Dear Mr. Levers: Enclosed please find two inventories one as of the 19th when you took over the Yucca Bar, the other one was taken the last day in June 1941.

Also you will find the Bill of Sale and release of Chattel Mortgage, in regard to the Yucca Bar.

Dan Loudon was in to see me to day, and he states he has the money to buy the place, and pay cash for it, he asked if you could give him a better price than \$1,500 plus inventory, and I told him I would ask you. By the way would you care to sell to Dan, personally I think it would mean more trouble to you in the long run, nevertheless it is entirely up to you. Trusting to hear from you at an early date, I am

Yours very truly,

JAMES BRISTER.

JB:ld.

Exhibit. 138.

Yucca Bar—Carrizozo.

Purchases from Levers Bros., Roswell.

1941

Sept. 1941

Date		Inv. No.	Kegs & Cases	Contents	Kegs & Cases
9/3	Inv.	112.50	15.25	122.71	
5	C/m	152.29			13.80
8	Inv.	114.75		6.60	
10	Inv.	115.74	10.00	102.27	
11	C/m	155.12			14.75
11	Inv.	116.31	6.00	48.82	
12	Inv.	116.56	1.00	2.91	
17	Inv.	117.19	17.70	170.17	
18	C/m	156.16			43.80
12	C/m	116.31			6.00
18	Inv.	117.32	2.00	10.02	
20	Inv.	111.74		26.14	
25	Inv.	119.59	12.00	148.08	
26	C/m	157.61			9.90
26	Inv.	119.70	10.00	48.81	
27	Inv.	118.46	1.25	14.77	
30	Inv.	119.87		47.41	
			75.20	748.71	58.25

Sales Sept.

Inv. 8/31/41 431.60
 v Corrected v 139.00

1,248.01

570.60

Purchases:

Levers Bros. 748.71
 Others 25.85

345.16

Less Inv. 9/30/41 616.41

Cost of goods sold 728.75 728.75

Gross Income 519.26

Percentage mark up 71.26%

Less expenses (year report) 387.08

Gain—Profit \$132.18

Exhibit 139.

Roswell, New Mexico, July 26, 1941

Mr. James Brister, Carrizozo, New Mexico.

434 Dear Mr. Brister: When I was over there yesterday I forgot to mention to you that I would like to have you get the lease drawn up from Mr. Findlay to the Standard Liquor Stores, Inc. and, if possible, when you draw this lease up have it read for one year starting July 1st with option of re-newing the lease for a second year upon the same rental and terms. Please attend to this at once.

Also, give Max, when he gives you this letter, the daily reports on the place from the start up until today and then you can send in the balance of your reports for the rest of the month on the first day of the month. I need these reports over here at this time.

Yours very truly,

FEL:fd

FOREST E. LEVERS

94140

YUCCA BAR

No. 172

AMERICAN NEW MEXICO 24 Nov 1947

James B. Vaughn
James B. Vaughn
James B. Vaughn

\$150.00

DOLLARS

LINCOLN COUNTY AGENCY
CITIZENS STATE BANK OF VAUGHN
CARRIZO NEW MEXICO

EXHIBIT NO. 108

James B. Vaughn

94140

James B. Vaughn

Exhibit 141.

Sheet No.	Credit Limit		Name	Notes Receivable	Account No.
Rating			Address		
Business					
Date	Items	Folio	Debits	Credits	Balance
1937					
	Balance Brought Fwd from 1936		2 787 14		2 787 14
Jan 7	CB# 292 Geo. R. Lawrence	463		15.00✓	
21	CB# 18 L. G. Syferd	468		50 00✓	
22	CB# 20 Oran C. Dale Jr.	469		25 00✓	2 697 14
Feb 10	L. G. Syferd 10%	477	750 00✓		
20	CB# 70 L. G. Syferd	482		50 00✓	
✓ 26	S.L. Stores Inc. Ck on Note 2-23-37	485		44 50✓	3 352 64
✓ Mar 1	S.L. Stores Inc. ✓ ✓ ✓ ✓ ✓ ✓ ✓	487		11 56✓	
✓ 3	On demand S.L.S. Inc. Note 2-23-37	488	7 805 67✓		
✓ 5	S.L.S. Inc. Ck.	490		✓ 133 81✓	
✓ 9	S.L.S. Inc. Ck.	492		✓ 5 85✓	
✓ 12	S.L.S. Inc. Ck.	493		✓ 41 91✓	
✓ 19	S.L.S. Inc. Ck.	497		✓ 51 38✓	
25	C.B. # 56 L. G. Syferd	499		50 00✓	10 863 80
Apr 22	C.B. # 104 L. G. Syferd	514		50 00✓	
27	C.B. # 5530 James E. Woolsey file fees, Carlsbad	516	13 00		
✓ 30	C.B. # 118 S.L.S. Inc. Ck.	518		✓ 60 67✓	10 753 13
May 25	C.B. # 160 L. G. Syferd	531		50 00✓	
✓ 31	C.B. # 170 S.L.S. Inc. Ck.	534		21 47✓	10 681 66
June 24	C.B. # 212 O. C. Dale Jr.	548		50 00✓	10 631 66
July 6	Note Doug B. Johnson @ 8%	554	150 00✓		
22	C.B. # 260 L. G. Syferd	562		50 00✓	10 731 66
✓ Aug 9	Cr #15182 S.L.S. Inc. settle note S.L.S. Inc. credit	571		1 885 43✓	
✓ ✓	C.B. # 290 S.L.S. Inc. Cr #15230 Hollywood	572		36 91✓	
25	C.B. # 20 L. G. Syferd	580		50 00✓	8 759 32
Sept 8	C.B. # 44 J. B. McLarin	587		25 00✓	
✓ 18	Crystal Bar. Transfer from Accts Rec	592	153 21✓		8 887 53
✓ 20	Crystal Bar. Mdse transferred to new a/c	607		736 88✓	8 150 65
Dec 31	L. S. Drake	644A	384 00✓		8 534 65
	Bal Fwd to 1938 ledger			8 534 65	

	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.	Dr.	Cr.
Balance Brought Fwd								
Hobbs								
June 29 1st Natl. O. H. Matney Frt Car Beer	7749						336 41	336 41
✓ B. F. Rose Frt. Carb. Bev.	7750						150 29	150 29
Contracts								
✓ Flynn Motors Install "38" Int. Pay	7751	100 00 ✓					100 00	
✓ Sale R. Estate Hobbs (3-18-38/4000.00)								
(4- 1-38/4275.00)			8 275 00 ✓		8 275 00			
(Illegible dates)								
✓ Deposit (transferred from Lea Cnty Bank	Ck				8 275 00	8 275 00		
✓ Hiram Walker Notes Pay ck Lea Cnty		250 00 ✓					250 00	
✓ Hirsch Dist							100 00	
✓ Blatz Brew Co. Cr #19388 Car 90734								43 02
✓ 19366 v 80000								12 82
✓ Hubbert's Fruit Pro. (Inv #2901								79 55
(\$90.00 Les: frt \$5.95 Les 590+50)								
25 Hobbs Summary #451			149 35 ✓	3 60 ✓				
27 Hobbs Summary #452			243 94 ✓	8 98 ✓				
28 Hobbs Summary (B)			231 45 ✓					
✓ Hobbs Summary #453 Warren Johnson		10.00 ✓	40 50 ✓	12 75 ✓				
29 Hobbs Summary #454			156 12 ✓	4 00 ✓				
✓ Roswell Summary					877 24 ✓			
✓ Artesia Storage expense		15 30 ✓				15 30 ✓		
✓ Hobbs Insf. Ck. 6/3 Milton Blakely	125		3 60 ✓			3 60 ✓		
✓ Bottle a/c		4 64 ✓				4 64 ✓		
Deposit						448 31 ✓	448 31	
Travel						4 35 ✓		
30 Elson & Co Inv #19835								2 75
✓ Hobbs Summary #455			159 63 ✓	8 20 ✓				
✓ Roswell Summary Lara Service								
ret'd Coca Cola box Bottle a/c (mise		25 ✓			1 566 06 ✓			
✓ W. E. McLaughlin	126		15 00 ✓		15 00 ✓			
✓ Cases						4 00 ✓		
✓ Photostatic pictures						3 26 ✓		
						25 ✓		
✓ Pkg at bus Joe Scavarda telephone		270 ✓				270 ✓		
✓ Bottle a/c		497 ✓				497 ✓		
✓ Deposits						3 284 40 ✓	3 284 40	
✓ Truck, Travel						5 58 ✓		
						9 18 ✓		
						6 00 ✓		
✓ Camp, Fr Dray						70 ✓		
✓ Treas of Clovis Cnty Personel Tax	L.B. 116 58 F.E.L. 5 54 R.E.L. 7 27(97 52)	129 39 ✓					129 39	
July 1 Division of Liq Whse Lic Ros		77 53	850 00 ✓				850 00	

Exhibit 143.

Sheet No.

Account No. .

Rating
Business

Credit Limit

Name Notes Payable
Address

Date	Items	Folio	v.	Debits	Credits	Balance
1936						
	Balance Brought Fwd					
✓ June 20	First Natl S.L.S. Inc. Ck 3887	364	✓	500 00✓		
22	G.M.A.C. Chev Wreck Truck	✓	✓	358 16✓		
✓ 23	First Natl S.L.S. Inc. Ck 3897	365	✓	500 00✓		
	Blatz Brewing Co Inv 5/9 Ck 3902	✓	✓	100 00✓✓		
✓ 29	S.L.S. Inc. Ck #3930	368	✓	500 00✓		32 706 60
				<u>28 919 89</u>	61 626 49	
July 4	Blatz Brewing Co. In 5/7-14-12					
	Ck #3984	373	✓	200 00✓		
7	Blatz Brewing Co Ck #4001	✓	✓	50 00✓		
✓ 9	First Natl. Smoke House C.B. #55.	374	✓	300 00✓		
8	Blatz Brewing Co Inv 5/22 Ck 4017	375	✓	50 00✓		
✓ 11	First Natl S.L.S. Inc. Ck #4019	✓	✓	500 00✓		
13	Blatz Brewing Co Inv 6/2 6/3					
	Ck #4023	376	✓	100 00✓		
✓ 16	First Natl Bank Smoke House C 67.	378	✓	300 00✓		
21	Blatz Brewing Co Inv 6/8 Ck #4062	380	✓	50 00✓		
✓ 24	First Natl Bank 6 mo C. 10	381	✓		10 000 00✓	
	Gen. Motors Accept Chev Coupe					
	Ck 4079	382	✓	25 61✓		
	Gen. Motors Accept ✓ Truck					
	1936 Ck 4081	✓	✓	40 44✓		
	29.96					
	29.74					

		Eq. Inv. & Ins. Ford Coupe	59.70						
			Ck 4082	✓	✓	59 70	✓		
	27	First Natl Blatz Brew. Ck	4096	✓	✓	50 00	✓		
✓	27	First Natl Bank Smoke House C.	15 383	✓	✓	300 00	✓		
	28	Blatz Brewing Co 1st Natl Ck	#4101 384	✓	✓	50 00	✓		
✓	31	First Natl Smoke House C.	23 386	✓	✓	300 00	✓		
						31 295 64		71 626 49	40 330 85
✓ Aug	6	First Natl Smoke House C.	33 390	✓	✓	300 00	✓		
	11	Zerk Hdw. Apply Note	392	✓	✓	250 00	✓		
	13	Gen Motors Install 36 Chev Truck							
			Ck 4207	393	✓	40 44	✓		
✓	13	First Natl Bank S. House C.	#45 394	✓	✓	300 00	✓		
			29.74						
			29.96						
	19	Eq Inv & Ins Install V 8	59.70						
			Ck 4255	397	✓	59 70	✓		
	25	Gen Motors Accept 1936 Chev							
			Ck4272	398	✓	25 61	✓		
✓	24	1st Natl. Smoke House C	#63 399	✓	✓	300 00	✓		

Exhibit 144.

Sheet No.

Account No.

Rating

Credit Limit

Name Notes Payable

Business

Address

Date	Items	Folio	✓	Debits	Credits	Balance
1937	Fwd					51 421 43
Nov 3	Ck #6614 G.M.A.C. Chev O.H.M.	615		26 49✓		
8	Ck #6629 1st Natl. Fruit Ind.	617		250 00✓✓		
15	Ck #6653 Com. Cr. Diamond "T."	619		44 00✓✓		
16	Ck #6674 Krogman Dist	620		500 00✓✓		
17	Ck #6680 G.M.A.C. Chev Truck	624		40 44✓✓		
24	G.M.A.C. Bal 1938 Chev Truck	626			605 88✓✓	51 166 38
Dec 4	Ck #6782 G.M.A.C. O.H.M. Coupe	630		26 49✓✓		
15	Ck #6830 Com. Cr. Co. Diamond T	635		44 00✓✓		51 095 89
31	Adjustment to Undivided profits			14 790 55		36 305 24
	Transferred to 1938 Ledger			36 305 34		

Exhibit 150.

Sheet No.

Account No.

Rating

Credit Limit

Name Hobbs Real Estate

Business

Address Palace Bar Bldg. S.L.S.

Date	Items	Folio	✓	Debits	Credits	Balance
1936						
	Balance Brought Fwd 1935			2 013 39		2 013 39
✓ Aug 1	Nailing roof on Palace Hobbs #184	387		6 05		2 019 44
Sept 28	B. F. Rose Frt on Stools etc					
	Ck, #4430	415		7 18		2 026 62
✓ 30	Hobbs #235 Collins Carpenter	417		5 00		
Oct 2	Porter for Cleaning Palace Hobbs					
	#237	418		2 00		
4	Part Pay Painter Palace ✓ #237	✓		50 00		
✓	Plumbing work ✓ #237	✓		55 60		
✓	Wiring at ✓ #237	✓		57 50		
✓	W. W. Collins Carp. work #237	✓		49 00		
7	Warren Johnson Labor Ck #4483			66 50		
✓	Bal. wiring on Palace BldgH. #241	420		25 45		
12	Part pay painting Hobbs #244	421		75 00		
				22 85		
12	Acme Lbr. Co, Tin trough ✓ #245	✓		4 00		
16	Busy Bee for Warren Johnson					
	Meals #249	423		47 61		
17/18	Bal Papering & Painting Hobbs #250	425		55 00		
27	Carpenter Work Report ✓ #258	428		4 50		2 546 63
Nov 1	Pierce Furn. Co. Hobbs #262	431		33 00 ✓ ✓		
2	Danial Paint 1-7 ft Devisess Bar					
	Ck 4610	432		5 36 ✓		
5	Montgomery Ward Linoleum					
	Ck #4630	434		65 03 ✓		
6	Neon sign Hobbs #266	435		41 40 ✓ ✓		
24	Acme Lbr Cash on a/c	443		50 00 ✓		2 741 42
30	Work on bldg Hobbs #285	447		2 50		
Dec 4	Neon sign payment Hobbs #290	448		15 00		2 758 92
(Illegible writing and figures in left margin.)						
31	Note	460A		750 00		3 508 92
Bal to 1937 ledger					3 508 92	—o—

Exhibit 145.

Sheet No. 1
Rating
Business

Credit Limit

Name Hobbs Real Estate
Address Palace Bldg.

Account #1937

Date	Items	Folio	✓	Debits	Credits	Balance
1937						
	Balance Brought Fwd from 1936			3 508 92		3 508 92
Jan 13	Hobbs #10 Neon sign in full	466		15 00		
29	Correcting R.-E. Warehouse & Palace a/c	471		267 84 ✓		3 791 76
✓ Feb 25	Ck #5159 Town of Hobbs, Paving	485		100 00 ✓		3 891 76
Dec 31	Appreciation—(Surplus)			5 108 24		9 000 00
31	Balance fwd to 1938 ledger				9 000 00	—

Exhibit 146.

Sheet No.
Rating
Business

Credit Limit

Name Hobbs Real Estate
Address Palace Building

Account No.

Date	Items	Folio	✓	Debits	Credits	Balance
1938						
	Balance Brought Fwd from 1937			9 000 00		9 000 00
✓ June 29	Sale (4000.00 3-18-38) (4275.00 4-1-38)	725			8 275 00	725 00
30	Trans to Surplus from appreciation				725 00	—

Exhibit 147.

Sheet No.		Credit Limit		Account No.	
Rating				Interest on Notes Payable	
Business			Name Address	Notes Rec	
Date	Items	Folio	Debits	Credits	Balance
1936					
Jan 6	Interest on N. J. Duke Notes Rec				
	ck 132 286		xxxx	37 00	
28	Interest Radio Cafe. Note Rec.				
	Interest to 1/1/36			18 33	
28	Interest on Notes Payable ck 3040		90 00		
			90 00	55 00	
Feb 6	Interest 90 Day ck 3110		170 00		34 67 Dr
Feb 8	Interest G. B. Alderson Notes Rec				
	ck 190			2 24	
Feb 17	✓ 90Day— ck 3159		50 00		252 43
			310 00	57 57	
✓ Apr 28	First Natl Int 90 day on 4500.00				
	Note Ck. 3561 336		180 00		
29	Interest to 3/8/36 C. 328 337		xxxx	15 70	416 73
			490 00	73 27	
May 4	Gooderham & Worts Int on Note				
	#1 Ck 3630 341		2 50 ✓		
	Hiram Walker Inc. Int on Note				
	#1 Ck 3631 ✓		2 50 ✓		
✓ 7	First Natl Int 90 days on \$8500.00				
	Ck 3635 ✓		170 00 ✓		
✓ 18	✓ ✓ Int 90 days on \$2500.00				
	Ck #3689 346		50 00		641 73
			715 00	73 27	
✓ June 5	Int. to 6/1/36 Worth Bar Geo				
	McPherson Ck #3807 357		44 81		
8	Int 60 days 1000.00 Note G. & W.				
	Ck 3815 358		10 00		
8	Int 60 days 1000.00 Note H.W.				
	Ck 3816 ✓		10 00		
15	Gooderham & Worts				
	362		1 32		
✓ 17	First Natl Int S. House Note C. 15				
	363		120 66		
19	Inter Harnister Frazier P. Up				
	Ck 3886 364		9 59		
✓ 22	Zerk Hdw Int on Note Ck 3892				
	✓		27 67		865 78
			939 05	73 27	
✓ July 28	Int 90 Days First Natl Bank Ck 4103				
	384		90 00		955 78
			1 029 05		
✓ Aug 7	Int 90 Days ✓ ✓ ✓ Ck 4175				
			170 00		
✓ 17	Int 90 Days ✓ ✓ ✓ Ck 4236				
			50 00		1 175 78

Exhibit 148.

Sheet No. 1

Account No. 1937

Rating
Business

Credit Limit

Name Interest on Notes
Address Payable & Receivable

Date	Items	Folio	Debits	Credits	Balance
1937					
✓ Jan 4	C.B. # 287 First Natl. Int on Notes P.	462	177 78		
7	C.B. # 292 Geo. R. Laurence Int				
	N. Rec	463		3 00	
22	C.B. # 20 Oran Dale Int on N. Rec	469		1 88	
+ 25	Ck #5004 1st Natl 6 mo 10th Note				
	400.00 4 mo on 4580	✓	520 00		
✓ 28	Ck #5020 Int on 4500.00 Note 3 mo	471	90 00		782 90
✓ Feb 8	Ck #5072 Int on 8500.00 Note	476	170 00		
✓ 17	Ck #5114 First Natl. Int 3 mo on				
	\$2500.00	480	50 00		1 002 90
Mar 8	C.B. # 26 J. B. McKain 3/8/37	490		13 20	989 70
✓ Apr 15	Ck #5447 First Natl. Int 90 days	510	40 00		
✓ 28	Ck #5539 First Natl. Int 90 days				
	on 4500.00	517	90 00		1 119 70
✓ May 7	Ck #5597 First Natl. Int 90	✓			
	on 8500 00	523	170 00		
✓ 17	Ck #5643 First Natl. Int 90 days				
	on 2,500 00	527	50 00		1 339 70
June 9	Ck #5808 Hiram Walker Inc	541	55 00		
18	6-8-37 Western Reserve Int 6% +				
	10.00 add	545	63 48		
24	C.B. # 212 O. C. Dale	548		2 10	
✓	C.B. # 212 Syferd	✓		50 00	1 406 08
✓ July 16	Ck #6014 1st Natl 6 Mo Int on				
	\$4650.00 @ 6%	559	139 50		
✓	✓ Ck #6015 1st Natl 3	✓			
	✓ on				
	\$2000.00 @ 8%	✓	40 00		
26	Ck #6064 Hiram Walker Inc.	564	77 50		
✓ 28	Ck #6080 1st Natl Bank 3 Mo int				
	on 4500.00	565	90 00		1 753 08
✓ Aug 7	Ck #6140 First Natl Bank 3 Mo				
	int on \$8500.00	571	170 00		
11	Ck #6166 1st ✓ San Angelo				
	Wine & S	572	5 93		
12	Ck #6174 1st ✓ Byrd Dist Co	573	1 45		
✓ 17	Ck #6211 1st Natl 3 Mo Int on				
	\$2500.00	577	50 00 ✓		
25	C.B. #6239 Com. Cor. Co. Int. on				
	payment	580	3 00		

Exhibit 149.

Account No.

 Sheet No.
 Rating
 Business

Credit Limit

 Name Rent Account
 Address Palace Bar

Date	Items	Folio	✓	Debits	Credits	Balance
1936						
May 15	by Z. Johnson	346			60 00	60 00
✓ ✓ ✓	Back Rent	354			600 00	
✓ June 5	Sam Newsom Inv #10506 tr 6/15/36	356			125 00	
22	Sam Newsom Inv #4749	366			125 00	910 00
✓ Oct 9	by Stanley Cr Memo #12534	420			100 00	1 010 00
✓ Nov 19	Stanley Bros Cr Memo #12867					
	11-15 to 12-15	441			100 00 ✓	1 110 00
✓ Dec 20	Stanley Bros Cr Memo #13656					
	12-15 to 1-15-37	456			100 00	1 210 00 Cr
31	Profit & Loss	461A		1 210 00		—o—

Exhibit 151.

Account No.

 Sheet No.
 Rating
 Business

Credit Limit

 Name Standard Liquor Stores Inc
 Address

Date	Items	Folio	✓	Debits	Credits	Balance
1936						
July						
6-30	City Clerk Hobbs 1/2 Lic Palace					
	Ck 3979	371		750 00		
6-30	City Clerk Hobbs 1/2 ✓ Worth					
	✓ 3980	✓		750 00		
July 3	C.B. #42 for 2 L.B. Cks @ \$750.00	372			1 500 00	
✓	C.B. #42 for loan	✓			1 500 00	
7	C.B. #50 Loan	374			800 00	
25	Check	383			500 00	2 800 00 Cr
	(Illegible words and figures in left margin.)			1 500 00	4 300 00	
Dec 31	Note	460A		8 000 00		5 200 00 Dr
	Bal to 1937 ledger				5 200 00	—o—

-Exhibit 152.

HP 8/5/42

Name Real Estate (Eunice) Rating Credit Limit

Address Lots #6 & 7. Business

Date	Items	Folio	Debits	Credits	Balance
1936					
Jan. 18	Cash Book 155	291	50.00		50.00
Feb. 20	Ck. 3179 Eunice Real Estate (Deed)	304	200.00		
May 7	Sales Summary	343		300.00	50.00
Dec. 31	Profit and Loss		50.00		

Exhibit 153.

Sheet No.

Account No. HP 8/31/42

Rating Credit Limit

Name Mr & Mrs Manual

Business

Address Lot 6 Eunice

Date	Items	Folio	Debits	Credits	Balance
1937					
Mar. 3	Cr Memo #11634 Mar 1 to Apr 1, 1937	488		10 00	10 00
Apr. 2	Cr Memo #11174 Apr 1 to May 1 ✓	505		10 00	20 00
May 4	Cr Memo #11837 May 1 to June 1 ✓	521		10 00	30 00
June 4	Cr Memo #11899 June 1 to July 1	537		5 00	35 00
July 3	Cr Memo #11982 June 1 to July 1	553		5 00	
13	Cr Memo #11991 July 1 to Aug 1	558		10 00	50 00
Aug 3	Cr Memo #18204 Aug 1 to Sept 1	569		10 00	60 00
Sept 7	Cr Memo #18356 Sept 1 to Oct 1	586		10 00	70 00
Oct 12	Cr Memo # 232				
	(report Oct 1 to Nov 1	603		10 00	80 00
Dec 7	Cr Memo #18544 Dec 1 to Jan 1, 38	631		10 00	90 00

P & L.

90 00

—0—

Exhibit 154.

United States of America, District of New Mexico, ss.

449 I, Forest E. Levers, half owner of the partnership known as Levers & Levers, Levers Brothers, being a resident of Roswell, New Mexico, first being duly sworn according to law depose and say:

That, I am half owner of the above named wholesale liquor dealers located at 209 East Second Street, Roswell, New Mexico, and operate a branch at 615 Main Street, Hobbs, New Mexico. At our Hobbs branch we are displaying W.L.D. license No. 2135 and R.L.D. license No. 39458 and at our Roswell branch we are displaying W.L.D. license No. 2134 and R.L.D. license No. 39457. We maintain our government records forms 52A and 52B also forms 338 at our Roswell branch located at 209 East Second Street, Roswell, New Mexico. All sales of distilled spirit merchandise emanating from both branches in Roswell and Hobbs, New Mexico, are entered into the government forms which are maintained at the Roswell branch. All invoices covering goods sold at the Hobbs branch are mailed to the Roswell branch where the Government forms are maintained, and entries thereto made. We also carry our retail liquor dealers license at both branches in order to sell less than wholesale quantities. Our Hobbs branch sell considerable merchandise in Texas and these sales are not made unless our manager at Hobbs has been entirely satisfied that the recipient of this merchandise from Texas are in possession of Federal Tax Stamps. We make no shipments into Texas, either common-carrier Rail Road or our own transportation. Texas dealers haul their own merchandise from our warehouse at Hobbs.

The special investigator, who has made an investigation of our warehouses as of December 13-15-17, has found it quite impossible to strike a balance. However, we do maintain a perpetual inventory and all goods going into both branches are entered in our 52A form and all merchandise sent from both premises are entered in our 52B form at our
450 Roswell, New Mexico, plant. When the Special Investigator made this investigation on December 15 and 17, at the Roswell branch he found forms 52A, 52B and 338 were not posted to date, with this exception of

52A, which was partially posted through December fourth. However, this discrepancy of making the entries as received and disposed of is being corrected as of this date, and the Special Investigator who is making this investigation informs us that we are irregular in not maintaining our 52A and 52B and form 38 where the merchandise is kept and where the wholesale liquor dealers stamp is displayed.

Our main retail business is carried on from the Smoke House located at 124 North Main, where we maintain a retail establishment. R.L.D. 195677.

Mr. W. L. Lile, who is the book-keeper, and Shirley Gray, stenographer, who keep the Government Records at the Roswell branch, when informed of the shortage in the Inspector's report, stated that this discrepancy can be accounted for materially for the reason that the invoices for merchandise not collected for are held in the Hobbs branch until such a time such collection are made and the cash sent in to this office, and the entries made to 52B, and it is quite possible that a considerable amount of this merchandise shortage was enroute, due to the time that there were several days intervened between the Hobbs inventory and the Roswell inventory. This will be corrected as of this date.

Further *deponeth* sayeth not;

FOREST E. LEVERS.

Subscribed and sworn to before me this 17th of December, A. D. 1934, in the city of Roswell, and state of New Mexico.

JNO. H. WOODSIDE,

Special Investigator,

Bureau of Internal Revenue,

Alcohol Tax Unit.

ROBERT JONES, Witness.

Verified as an exact copy of the affidavit in the Permit File No. P-8482 of Levers Brothers—January 7, 1944.

BULA M. OLIVER,
FAA Permit Clerk

HAZEL DILLINGHAM,
Permit Clerk.

Exhibit 155.

Roswell, New Mexico, Jan. 7, 1944.

District Supervisor, Alcohol Tax Unit, Denver, Colorado.

451 This report is made pursuant to instructions from your office, dated December 21 and 23, 1943. It pertains, in part, to information I have found out through investigation relating to seven retail liquor dealer stores, formerly reported as owned and operated by Standard Liquor Stores, Inc., of Roswell, New Mexico:

Smoke House Roswell, N. M.

The Cantina Bar, Roswell, N. M.

The Heidelberg Inn, Hobbs, N. M.

The Hollywood Club, Hobbs, N. M.

The Dexter Bar, Dexter, N. M.

The Standard Bar, Clovis, N. M.

The Central Bar, Tucumcari, N. M.

There were reported changes of ownership of the establishments as of June 30, 1943. Facts set out show information I have ascertained through investigation.

The report also relates to business operations of Forest E. Levers, an individual, and Forest E. Levers, Special Administrator of the Estate of Ray E. Levers, DBA; Levers Brothers, 209 E. 2nd Street, Roswell, New Mexico, since November 15, 1943, the date on which Oran C. Dale was discharged by the court as Co-Administrator.

On November 30, 1943, Forest Levers, member of the Levers Brothers Wholesale Liquor Company was questioned by me in the presence of Harry Bliss, Deputy Collector, Internal Revenue Service, regarding the number of accounts he had on his books and his method in rationing each. Mr. Levers stated that he had arrived at a proportionate amount for each customer based on previous purchases, and with the exception of some customers who had quit business during the year, had served each customer about equally. His Form 52B and 338 records were then checked, and it was learned from this source that what he had told me was not true. There are seven retail liquor stores in this district which are reputed to be owned, con-

trolled, and operated by Levers Brothers Wholesale Liquor Company. The status of these retail outlets as to ownership and operation is shown in paragraphs that will follow after the statements of facts showing how the stores are supplied with intoxicating liquors for resale.

These stores are not served by the other wholesale companies because of the belief that they are owned and controlled by Levers Brothers Wholesale Liquor Company.

From June 1 through October, 1943, Levers Brothers, according to their 52B records, sold 15,560.23 wine gallons of whiskey, practically all of which was sent to the seven stores heretofore mentioned.

452 Mr. Smith, who operates the Cantina Bar, Roswell, New Mexico, stated when interviewed on November 28 that he had been ordered by Mr. W. L. Lile to discontinue the sale of whiskey by the package, which would allow him more to serve over the bar; that they would be unable to supply the increased trade. Mr. Smith further stated that since he had received that order, Mr. Lile had permitted him to sell about one case a day by the package. Mr. Lile is the general manager of the Standard Liquor Stores, Incorporated, he is bookkeeper for Levers Brothers Wholesale Liquor Company, custodian for the Douglas-Guardian Warehouse (storage place for the Schenley Dist. Co.), also, the potential owner of the Yucca Nite Club, Roswell, New Mexico (not mentioned as one of the Levers Brothers controlled stores). Mr. Smith further stated that he had more than 200 cases of liquor at the Cantina.

W. W. Motsenbacker, who operates the Smokehouse on a straight salary, stated when interviewed, that he, too, had been ordered by Mr. Lile to discontinue the sales of whiskey by the package on about September 1, 1943. Since that time, however, he has been allowed to sell a few bottles each day to customers who would not drink at the bar. He stated that he had a good stock of whiskey on hand, but did not state how much.

The operators of other Standard Liquor Stores, Inc., have not been interviewed, however, I received direct and reliable information on or about November 25, 1943, that the

Heidelberg Inn at Hobbs, New Mexico, had 350 cases of whiskey on hand at that time, and also have reliable information that the Central Bar in Tucumcari has a good stock of whiskey there.

Levers Brothers, according to their 338 report, received on the premises during the period of June through October, 1943, 13,879.64 wine gallons of whiskey. Customers other than the Standard Liquor Stores received very little of this whiskey. These receipts equal to about a fifty per cent cut over this same period in 1942, which shows that he received 26,133.85 wine gallons in 1942. Levers Brothers buy practically all of their merchandise from the Schenley Distilling Corporation who, according to Forest Levers, began rationing their whiskey sometime late in 1942 in order to make what they had on hand take care of their trade until the war is over, which they estimated to be five years. After Mr. Levers told me on November 30, 1943 that he had rationed out the whiskey he had sold about equally among his sixty customers, some of these customers have been interviewed, and following are the statements made by them:

Harold Rives, owner, Quality Liquor Store (Package) Roswell, New Mexico, stated on November 29 that he had received practically no whiskey from Levers Brothers during the entire year of 1943, he did receive a small order November 2, 1943, of less than four cases.

453 Clyde Roberts, owner, Green Lantern Bar, Roswell, New Mexico, stated on November 30, that he had received practically no whiskey from Levers Brothers during the year 1943 but did receive a small order on November 22, 1943.

Ernie Emerson, owner, Bank Bar, Roswell, New Mexico, was interviewed November 30, and stated he received a small order from Levers Brothers in November, practically none for almost a year.

Dot Sargent, owner, Buckhorn Bar, Roswell, New Mexico, was interviewed December 1, 1943, and stated that he had not received any whiskey from Levers Brothers since January, 1943.

John Leokou, owner, Dinty Moore's Cafe and Bar, Roswell, New Mexico, was interviewed on December 1, 1942, and checked with me his invoices. He received about four cases of whiskey in November, and none for five months prior to that, a very small amount from Levers Brothers for the entire year.

Alex Berry, owner, Berry's Cafe and Bar, Roswell, New Mexico, stated when interviewed December 1 that he had received only a few cases of whiskey from Levers Brothers during the year, 1943.

Billy Wilson, bookkeeper and buyer for the Blue Moqn Nite Club, Roswell, New Mexico, stated when interviewed December 2, 1943, that he had purchased less than twelve cases of whiskey from Levers Brothers since June, 1943.

Ann Gabber, owner, Variety Liquor Store, was interviewed December 2, 1943, and stated she had not received but about four cases of whiskey since March, 1943 from Levers Brothers, except a purchase of fifty cases of Dunbar at \$60 a case.

Jack Mask, manager, Nickson Cocktail Lounge, Roswell, New Mexico, was interviewed on December 7, 1943, and after checking his invoices, found that he had purchased 298.51 cases of whiskey from Levers Brothers during 1943.

Ed Naylor, bartender and buyer for the Norton Cocktail Room, stated on December 2, 1943, that he had received about three small orders of whiskey from Levers Brothers during the year, 1943.

Joe Lily, owner, Collins Bar, Roswell, N. M., was interviewed on December 3, 1943, and stated that he was being discriminated against by Robert Porter & Son, Charles Ifeld Company, and Anchor Liquor Company because of their belief that his store was one of the Levers Brothers controlled places; therefore, what merchandise he had been able to buy was bought from Levers Brothers.

454 Jim Gonzales, manager, Star Bar, Roswell, N. M., stated that he received most of his merchandise from Levers Bros., that the other wholesale companies believed the Star Bar was another Levers Brothers controlled place.

Mrs. Marvin Horton, owner, Father Bear's Den, Roswell, N. M., was interviewed December 4, 1943, and stated that she had received only two or three cases of whiskey from Levers Brothers during the past six months.

J. E. Roberts, manager, Artesia Liquor Store, package house, was interviewed December 7, 1943, and stated that he had purchased a large amount of whiskey from Levers Brothers in 1942. I checked his invoices, which show that he had received thirty-four cases of good brands of whiskey from them during 1943, that he did get sixty cases of foreign whiskey which he believed they were unable to sell elsewhere.

Miss Gussie Wood, assistant manager, Artesia Cocktail Lounge, stated when interviewed on December 8, 1943, that they had received three and one-half cases of whiskey from Levers Brothers since they opened the place in September, 1943, that they had been regular customers of Levers Brothers prior to this time.

Pat O'Brien, assistant manager, Cantina Bar, Artesia, N. M., stated they had received one case of liquor from Levers Brothers in over five months.

O. W. Samelson, owner, Smoke House Bar, Artesia, New Mexico, was interviewed December 8, 1943, and stated that he had received less than twenty cases of whiskey from Levers Brothers during the entire year, 1943.

L. E. Falkner, owner, Falkner's Bar, Artesia, N. M., was interviewed December 8, 1943, and stated that he had received no whiskey from Levers Brothers during the year of 1943.

Louie Campanella, manager, El Casino Bar, Artesia, N. M., invoices were checked on December 8, 1943, which showed that he had received less than three cases of whiskey from Levers Brothers in more than six months.

Mrs. Bessie Froeck, manager, Jerry's Bar, Tucumcari, N. M., was interviewed December 3, 1943, and invoices checked which showed no whiskey received from Levers Brothers since February, 1943.

W. C. Reeb, owner, Reeb's Bar, Tucumcari, N. M., stated

that he had received no whiskey from Levers Brothers during 1943.

C. H. Manion, owner, Manion's Bar, Tucumcari, N. M., received his last order of whiskey from Levers in June, 1943.

455 Mrs. Mary Mitchell, owner, Vorenberg Bar, Tucumcari, N. M., received no liquor from Levers Brothers for more than one year.

With the exception of Jack Mask, Nickson Cocktail Lounge, Roswell, N. M., all the above named people stated that they did not believe they were being treated fairly by Levers Brothers; all of them had heard that the Standard Liquor Stores were never short of whiskey, they did state that they believed they were being rationed fairly by the other companies mentioned herein.

W. L. Lile propositioned Ann Cabber on November 25, 1943, to sell her the Yucca Nite Club for \$9,000 and would invoice her some 200 cases of whiskey which he stated was there at that time, that he would sell her this whiskey at the ceiling price. Ann Cabber told him she would buy the Club at this price if he would put 500 cases of Schenley whiskey with it at the ceiling price. On about December 1, 1942, Forest Levers called Ann Cabber and asked her what kind of a deal it was she wanted in buying the Yucca Nite Club. She told him the same as she had told Mr. Lile. He replied, "We can't put 500 cases of Schenley brands with it, but if you want to buy it at that price, we will put 500 cases of other brands of whiskey with it at \$49.51 per case. During Ann Cabber's conversation with Lile, he stated:

"Why should we put 500 cases in the Club just to get to sell it when we can get \$110 per case for it in Texas." (That part of Texas nearest to Roswell, New Mexico, is all dry territory. Bootleg in this territory has been from \$15 to \$20 per quart for some time.)

I have received many reports that Levers Brothers has sold considerable whiskey to Texas bootleggers at extra high prices, which would be billed the regular way to one of their retail stores. I have no concrete evidence regarding this matter.

On December 29, 1943, Mr. Carl Caruthers, City Clerk of the Town of Dexter, New Mexico, showed me an uncanceled check for \$250.00 signed by W. L. Lile, Auditor. Mr. Caruthers stated that this check was for the first three months of 1944 for license for the Dexter Bar. Mr. Caruthers stated that he knew nothing of the dissolution of the Standard Liquor Stores, Inc., however he did say that the city license which he made out in June, 1943, for the last half of 1943 was made to the Standard Stores, Inc., at this time it was decided by Mayor Garrison and others concerned to raise the city liquor license from \$450.00 per year to \$1,000.00 per year. Mayor Garrison stated that Mr. Lile, when first notified of the raise, told him he could not make such a raise, however Mr. Lile decided to pay the \$1,000.00 per year and called Mr. Garrison by phone from Roswell and asked if he could pay it quarterly. Carl Caruthers and Mayor Garrison stated that they talked to no other than Mr. Lile regarding this matter.

456 The city Clerk of Roswell, New Mexico, showed me the application of the Smoke House and Cantina Bar license which was made out June 14, 1943, and was signed by Oran Dale, Vice President, Standard Liquor Stores, Inc.

The Bank account of the Standard Liquor Stores, Inc., was changed to Standard Stores beginning July first 1943, however Mr. W. L. Lile, only, signs checks on this account and always signs "Auditor."

On or about Nov. 19, 1943, J. W. McAulay, Deputy Collector of Internal Revenue went to Levers Bros. wholesale liquor store in Roswell to verify some Social Security records of both Levers Bros. and the Standard Stores. Mr. Lile informed him at this time that he kept the books for both concerns there at Levers Bros. and volunteered to tell him there was no connection between the two as the law would not permit such. The books for both concerns were shown to Mr. McAulay at this time.

On January 4, 1944, Mr. McAulay called Mr. Lile by phone and asked him who was the "partner" referred to by Mr. Oran Dale when he went to the Collector's Office in Albuquerque and stated that he would appear as Partner from then on instead of Vice Pres. Mr. Lile stated that it was

his (Dale) wife Frances Dale, that they decided later to just leave her name out of it entirely as she would lawfully have a half interest in the business regardless.

Mrs. Bishop, City Clerk of Hobbs, New Mexico, showed me the application for license for the Heidelberg Inn and the Hollywood Club in Hobbs, N. M., which was dated June 14, 1943, and was signed by Oran Dale, Vice Pres. Standard Liquor Stores, Inc. However the Special Tax Stamp is made to Standard Stores.

The records of county clerks offices both of Lea and Chaves counties were checked, nothing recorded which would indicate a partnership with Oran Dale and the Standard Stores.

The Chaves County record show that on June 15, 1943, Oran C. Dale purchased from the Standard Liquor Stores, Inc., lot 5 and 12 ft. 11" of Lot 6. Block 5 (which is the Star Bar Property) Dale signed the deed as Vice President and Leland King as Sec. This deed shows that Dale paid \$10 and other valuables for this property. It is also shown on records of this County that Oran C. Dale was released as co-administrator of the estate of Ray Levers.

The city license for the two places in Roswell are made out to the Smoke House and the Cantina Bar, while the Special tax stamp is made to the Standard Stores.

It is believed that a settlement has been made between Forest Levers and Oran Dale and wife, prior to Oran Dale's going to the Army, however, there is no record made of such settlement, therefore it is difficult to get any information of value regarding how much of the Wholesale Company belongs to Dale and how much interest he actually has in the seven retail stores.

W. L. HILL, Inv. ATU.

Exhibit 156.

(Seal)
Office of the Collector
District of New Mexico
Address Reply to
Collector of Internal Revenue
and Refer to

MT:AWL:PAM

Treasury Department
Internal Revenue Service
Albuquerque, N. Mex.

December 1, 1943

Mr. A. V. Anderson, District Supervisor Alcohol Tax Unit,
535 Symes Bldg., Denver (2), Colorado.

457 Dear Mr. Anderson: Reference is made to your letter of November 22 requesting information regarding Forms 11 submitted by the Standard Stores covering the six special tax stamps issued to it.

According to our records, we have issued special tax stamps for the current fiscal year for Standard Stores as follows:

1. Standard Stores, Cantina Bar, 107 East Third St., Roswell, New Mexico.
2. Standard Stores, Smoke House, 124 North Main St., Roswell, New Mexico.
3. Standard Stores, Heidelberg Inn, 300 South Turner St., Hobbs, New Mexico.
4. Standard Stores, Hollywood Club, Harden Hotel, Hobbs, New Mexico.
5. Standard Stores, Central Bar, 202 South Second St., Tucumcari, New Mexico.
6. Standard Stores, Dexter Bar, Monroe St., Dexter, New Mexico.

The Forms 11 covering application for special tax stamps for all of the premises listed above were executed on July 20, 1943. Soon after that date, Mr. Oran C. Dale called at the Collector's office and requested that all Forms 11 involved be changed to indicate that his interest in the or-

organization was "Partner" rather than "Vice President" as shown on the applications and that the name of the organization be changed from "Standard Liquor Stores, Inc." to "Standard Stores". The special tax stamps involved were issued on the basis of the Forms 11 showing 458 Oran C. Dale as Partner. On August 27, 1943, Mr. Dale called at this office and requested a change to show himself as individual owner rather than as partner and the Forms 11 were amended to show this change in status.

Very truly yours,

A. W. LAPINE, Acting Chief
Miscellaneous Tax Division.

Findings of Fact.

From the record of Hearing, January 19, 1944. Annulment and Disapproval Proceedings against Permit No. 13-P-37 and Applications Nos. 13-P-66 and 13-I-12, Levers Brothers—Roswell, New Mexico.

Findings of Fact.

478 This hearing was conducted for the purpose of taking testimony and receiving evidence on which to base a finding of facts in three different cases, viz., Docket No. FA-6; Docket No. FA-7, and Docket No. FA-8, to which the United States Government and Levers Brothers of Roswell, New Mexico, are the parties and which were consolidated for the purpose of this hearing.

In case, Docket No. FA-6, a citation was issued by the Supervisor of District No. 13, Alcohol Tax Unit, which cites and orders Forest E. Levers, Co-partner, Forest E. Levers, Special Administrator, and Oran C. Dale, Co-Administrator, dba, Levers Brothers, to appear and show cause why basic permit No. 13-P-37, granted under the Federal Alcohol Administration Act and under which the above named individuals, operating under the name of Levers Brothers, are conducting a wholesale liquor business, should not be annulled.

The grounds of annulment are set out as:

1. The Applicant procured said Permit No. 13-P-37 through misrepresentation; and

2. The Applicant procured said Permit No. 13-P-37 through concealment of material fact.

Both of these grounds are based on answers made by the applicant to questions contained in his affidavit, supporting his application:

1. In reply to the question, "State whether applicant either directly, or indirectly, has actual or legal control over any other corporation; whether such control is effected through stock ownership or in any other manner, and if so, the extent and manner of such control." The applicant answered, "Have no connection with any corporation, directly or indirectly"; and

2. In reply to the question, "State whether or not any of its officers, directors, principal stockholders, or any other person holding or expecting to hold a substantial financial interest in the enterprise, holds any interest in any premises on which distilled spirits, wine or malt beverages are sold at retail, if so, give particulars including date such interest was acquired." The applicant answered, "Do not have any interest in any retail outlets." (Exhibit 1)

The respondents filed no answer. Forest E. Levers appeared in person and by his attorney, Jas. J. McNamara, and stipulated to the admittance of certain evidence; objected to the admittance of other documentary evidence and of certain testimony; questioned witnesses on cross-examination; but offered no evidence or testimony of any kind.

The findings of fact submitted are based on the positions held and the conduct while in their several positions, of eight different men, as said positions and conduct are disclosed by the record. These men are:

Ray E. Levers
Forest E. Levers
Rolland E. Levers
J. Clifton Hearn

W. J. Wilson
Oran C. Dale
Leland P. King
W. L. Lile

These eight men made up the personnel of two different organizations:

1. Levers Brothers, a Co-Partnership, composed of Ray E. Levers and Forest E. Levers, and of which W. L. Lile is bookkeeper, and

480 2. Smoke House Inc., afterwards named Standard Liquor Stores Inc., a corporation organized under the laws of the State of New Mexico; and of which Rolland E. Levers, J. Clifton Hearn and Leland P. King were the incorporators and served as the directors and officers thereof for the greater part of its existence. W. J. Wilson, served as bookkeeper and auditor for approximately five years, from the early part of 1937 to the spring of 1942. Oran C. Dale, later appears as director and officer and principal stockholder of the Standard Liquor Stores Inc., and also as assisting in the conducting of the business of Levers Brothers as Co-Administrator of the Estate of Ray E. Levers, Deceased.

Affidavit of Forest E. Levers under date of December 17, 1934, (Exhibit 154) states that he is half owner of the partnership known as Levers and Levers, Levers Brothers; that they operate as wholesale liquor dealers located at 209 East Second Street, Roswell, New Mexico, and also operate a branch at 615 Main Street, Hobbs, New Mexico; that they have in addition to the required wholesale liquor dealers' stamp, a retail liquor dealers' stamp for each place; that their main retail business is carried on from the Smoke House, located at 124 North Main, where they maintain a retail establishment; and that W. L. Lile is the bookkeeper.

January 21, 1936, Levers Brothers, a Co-Partnership, composed of Ray E. Levers and Forest E. Levers, made application for a wholesale liquor dealers' basic permit to engage in the business of purchasing for re-sale at wholesale, distilled spirits, wine and malt beverages, and in the receipt, sale and shipment in interstate and foreign commerce of alcoholic beverages so purchased, (Exhibit 40); and
481 in support of said application an affidavit of Forest E. Levers made before W. L. Lile, Notary Public, which sets out among other things; that

1. The applicant is a co-partnership of which Ray E. Levers and Forest E. Levers, are the members;

2. The funds were furnished by the parties;

3. They had operated under the Federal Alcohol Control as a wholesale distributor of distilled spirits, wine and malt beverages from January 28, 1935 until the act was declared null and void by United States Supreme Court Decision;

4. The partners had had experience in the beer business prior to prohibition and had been engaged in the wholesale distribution of distilled spirits, wine and malt beverages since the repeal of prohibition;

5. Members of the partnership are interested in other lines of business such as real estate, oil leases, oil producing properties, alfalfa milling business and other interests;

6. The capital investment is approximately \$75,000.00;

7. The applicant is engaged in the wholesale distribution of distilled spirits, wine and malt beverages and has been so engaged since January, 1934; (Exhibit 41).

Pursuant to said application, the administrator of the Federal Alcohol Administration Act, on March 21, 1936, issued to Ray E. Levers and Forest E. Levers, dba Levers Brothers, Basic Permit No. P-8482, conditioned upon the compliance by the permittee with

1. Sections 5 and 6 of the Federal Alcohol Administration act and all other provisions thereof;

2. The Twenty-first Amendment and laws relating to the enforcement thereof;

482 3. All laws relating to distilled spirits, wine and malt beverages, including taxes with respect thereto;

4. All applicable regulations made pursuant to the laws which are now or may hereafter be in force; and

5. The laws of all states in which the permittee engages in business. (Exhibit 42).

Levers Brothers operated under the above mentioned permit until the death of Ray E. Levers on October 1, 1941.

The Probate Court of Chaves County, New Mexico, on the petition of Forest E. Levers, issued an order under date of October 7, 1941 which recites that;

1. Ray E. Levers died on or about October 1, 1941

leaving an estate of real and personal property in said county;

2. There was a partnership business;

3. F. E. Levers is the sole surviving partner of the partnership known as Levers Brothers;

4. The partnership assets are of the net approximate value of \$22,500; and

5. Appointed F. E. Levers Special Administrator of the Estate of Ray E. Levers, deceased, in so far as the partnership assets in the firm of Levers Brothers are concerned; and administrator of the partnership estate; and directs and empowers him to continue the business known as Levers Brothers in the ordinary manner, to purchase necessary merchandise and equipment, and to disburse funds from the partnership account as may be necessary in the usual operation of said business without any further order from the Court. (Exhibit 34)

483 Three days later, October 10, 1941, upon the petition of Grace L. Levers, widow of Ray E. Levers, Deceased, the same Court made the same findings as set out above; and further that Ray E. Levers died intestate; appointed Oran C. Dale as Co-Administrator with F. E. Levers to administer the partnership assets of the Decedent, Ray E. Levers; and ordered that special letters of administration and co-administration of the partnership assets of the Decedent, issue to Oran C. Dale upon the posting of the required bond; (Exhibit 35):

October 15, 1941, letters of co-administration issued out of said Court to F. E. Levers and Oran C. Dale for the administration of the partnership assets of Ray E. Levers, Deceased. (Exhibit 36)

Levers Brothers by F. E. Levers, administrator, on October 20, 1941 notified the District Supervisor of District No. 13, Alcohol Tax Unit:

1. Of the death of Ray E. Levers;

2. That the business would continue to be conducted under the name of Levers Brothers;

3. That from that time on the names of the parties con-

stituting Levers Brothers; would be F. E. Levers, Individual, F. E. Levers, Special Administrator, and Oran C. Dale, Co-Administrator, of Levers Brothers. (Exhibit 38)

Levers Brothers, by F. E. Levers, on October 28, 1941 filed with the District Supervisor of District 13, Alcohol Tax Unit, Denver, Colorado, an application for an amended Basic Permit which was accompanied by an affidavit asking that an amended Basic Permit be issued as set out in the application. (Exhibit 37)

484 This application is by F. E. Levers, Co-Partner, F. E. Levers, Special Administrator, and Oran C. Dale Co-Administrator, of Levers Brothers and contains the same agreement as does Exhibit 40, (the original application of Levers Brothers). (Exhibit 31). Accompanying this application is the supporting affidavit of Forest E. Levers and Oran C. Dale, (Exhibit 32), in which is set out among other things: that

1. The business is a continuance of the co-partnership formerly composed of Forest E. Levers and Ray E. Levers, deceased;

2. Applicant has been in the wholesale liquor business since the fall of 1933 doing business as Levers Brothers;

3. They have no connection with any corporation directly or indirectly;

4. They do not hold any interest in any retail outlets;

5. They are in business doing business as Levers Brothers, operating under Basic Permit P-8482. (The same answers are made to the questions concerning control (3 above) and interest in outlets (4 above), as were made in the original application for basic permit, Exhibit 37, as set out in Exhibit 1.)

Pursuant to the above mentioned application and supporting affidavit, Basic Permit 13-P-37 was issued by the District Supervisor of District 13, Alcohol Tax Unit, under date of December 26, 1941, to Levers Brothers, (Forest E. Levers and Oran C. Dale, dba) conditioned the same as Exhibit 40, (Basic Permit P-8482). (Exhibit 30).

November 15, 1943 the Probate Court of the County of

Chaves, New Mexico, upon the petition and showing of Oran C. Dale, issued an order in the matter of the Estate of Ray E. Levers, deceased, which relieved and discharged Oran C. Dale as Co-Administrator of the partnership assets of Ray E. Levers, Deceased. (Exhibit 44)

485 November 29, 1943, Forest E. Levers, Special Administrator of Levers Brothers, dba, filed two separate applications with the Supervisor of District 13, Alcohol Tax Unit, Denver, Colorado; for

1. An Importer's Basic Permit; (Exhibit 45) and
2. A Wholesale Liquor Dealer's Basic Permit; (Exhibit 42).

The application for Wholesale Liquor Dealer's Basic Permit is accompanied by a supporting affidavit of Forest E. Levers, which among other things sets out; that

1. The place of business is 209 East Second Street, Roswell, New Mexico;

2. The name of the applicant is Levers Brothers;

3. The place of business is owned;

4. The business is a continuance of the co-partnership formerly composed of F. E. Levers and R. E. Levers, deceased;

5. The application was being filed in accordance with Regulations 1 to obtain a new permit as a result of the termination of the partnership by reason of the death of Ray E. Levers; and because of the resignation and discharge of Oran C. Dale as Co-Administrator of the Estate of Ray E. Levers, deceased;

6. The business is a continuance of the co-partnership of Forest E. Levers and Ray E. Levers, Deceased, Forest E. Levers, individual, Forest E. Levers, Special Administrator, being operated under Basic Permit No. 13-P-37;

7. There is a branch office at Hobbs, New Mexico, operated under the name of Levers Brothers;

8. Applicant has been in the wholesale liquor business since the fall of 1933, dba Levers Brothers;

486 9. Applicant has no connection with any corporation directly or indirectly;

10. There is no interest held in any premises on which distilled spirits, wine or malt beverages are sold at retail;

11. Schenley Distilleries Corporation, New York, New York, Blatz Brewing Company, Milwaukee, Wisconsin and Galveston-Houston Breweries Inc., Galveston, Texas, have designated applicant as their distributing agent for the Southeast part of New Mexico;

12. Applicant is engaged in business as Levers Brothers, operating under Basic Permit No. 13-P-37;

13. Applicant holds two State Licenses,

(a) Roswell—No. 96, and

(b) Hobbs—No. 97;

14. Applicant also holds two Federal Occupational Stamps,

(a) Roswell—WLD 145594 and RLD 3744, and

(b) Hobbs—WLD 6956 and RLD 69284.

The application for Importer's Basic Permit is accompanied by a supporting affidavit of Forest E. Levers which sets out the same information as does Exhibit 42, but does not answer question "e" therein in which is reference to the source of funds invested, etc. (Exhibit 46)

Affidavit of Forest E. Levers (Exhibit 154) under date of December 17, 1934, recites among other things "Our main retail business is carried on from the Smoke House, located at 124 North Main, where we maintain a retail establishment,—RLD No. 195677."

Articles of Incorporation of the Smoke House Inc., were on April 6, 1935 filed in the office of the State Corporation Commissioner for the State of New Mexico. These Articles provide; that

487 1. The corporation is empowered to operate

(a) a restaurant

(b) to conduct a retail liquor business, and

- (c) to conduct a general merchandise business;
2. The principal office is to be in Roswell, New Mexico;
 3. The authorized capital stock that may be issued is 100 shares of no par value;
 4. The capital stock with which the company may commence business is \$12,500;
 5. The names and addresses of the incorporators and the number of shares subscribed by each are:
 - (a) Rolland E. Levers, Rocky Ford, Colorado—94 shares
 - (b) J. Clifton Hearn, Hagerman, New Mexico—4 shares, and
 - (c) Leland King, Roswell, New Mexico—2 shares
 6. The above named parties shall act as a board of directors for the first three months of the company's existence and until their successors are regularly elected and qualified. (Exhibit 47).

"Exhibit 97", headed "Certificate as to the payment of capital stock of Smoke House Inc.", appears to have been drawn in order to conform with the laws of New Mexico and recites among other things, that Rolland E. Levers, president, and J. Clifton Hearn, Treasurer, of Smoke House Inc., certify that \$12,500, the amount of capital stock with which the company commenced business as authorized by its certificate of incorporation filed in the office of the State Corporation Commissioner on the 6th day of April, 1935, has been fully paid in. \$6,250 thereof by purchase of property and \$6,250 thereof in cash. (Rolland E. Levers, certifies as President, yet he does not sign the instrument. J. Clifton Hearn certifies as Treasurer and does not sign the instrument nor is he at any place shown to have been elected Treasurer. The instrument bears the name of Leland King, Treasurer.)

488 "Exhibit 98", headed "Organization of Smoke House Inc.", recites among other things, that

1. A meeting of the persons named as directors in the Articles of Incorporation was held April 26, 1935;

2. J. Clifton Hearn and Leland King were present in person;

3. Rolland E. Levers was present by his attorney in fact, J. Clifton Hearn;

4. J. Clifton Hearn, presided;

5. Rolland E. Levers was elected president;

6. Leland King was elected Secretary-Treasurer; (There seems to have been no vice-president elected, but J. Clifton Hearn appears to have approved the minutes as vice-president)

7. A meeting of the stockholders was called to be held at 2:30 P. M.;

8. All of the stockholders gave their assent to the holding of such stockholders' meeting; signed Rolland E. Levers, by J. Clifton Hearn, his attorney in fact. Leland King. ©

The minutes of the stockholders meeting, which appears to have followed the director's meeting, recite among other things; that

1. It was the first meeting of the stockholders;

2. Mr. Hearn, vice-president presided;

3. A code of by-laws was adopted;

4. The directors named in the certificate of incorporation are to act for three months until their successors are regularly elected and qualified. These minutes are signed, Leland King, Secretary and approved, J. Clifton Hearn, Vice-President.

489 A continuation of the director's meeting seems to have been held after the above stockholder's meeting, at which the following action was taken:

1. Approved the minutes of the meeting of the persons named in the Certificate of Incorporation as directors;

2. Adopted the by-laws for the company;

3. The vice-president announced that Rolland E. Levers, J. Clifton Hearn and Leland King would act as directors until their successors were regularly elected and qualified.

"Exhibit 101" recites that:

1. A special meeting of the stockholders of Smoke House Inc., was held on the day of September, 1938;
2. J. Clifton Hearn and Leland King were present in person;
3. Rolland E. Levers was present by proxy;
4. J. Clifton Hearn presided;
5. It was resolved that Article 1 of the Certificate of Incorporation of Smoke House Inc., be amended to read that the name of the Corporation shall be Standard Liquor Stores Inc.

"Exhibit 102" is the written consent of the stockholders to change the name of Corporation, signed

Rolland E. Levers—94 shares
— 4 shares

Leland P. King — 2 shares

"Exhibit 104" recites that

1. A special meeting of the board of directors of Smoke House Inc., was held October 11, 1935;
2. J. Clifton Hearn, vice-president and treasurer, was present in person;
3. Leland King, secretary, was present in person;
- 490 4. Rolland E. Levers was present by proxy;
5. It was resolved that the secretary call a meeting of stockholders to take such action as may be advisable and necessary with reference to the passage of a resolution by the stockholders that the name of the organization be changed. Signed—Leland P. King.

(This action seems to have been taken sometime in September (Exhibit 101). It will also be noted that in these matters, J. Clifton Hearn is recorded as vice-president and treasurer, though at no place is it shown that he was ever elected)

"Exhibit 107", recites: that

1. A regular quarterly meeting of the board of directors of the Standard Liquor Stores, Inc., was held March 9, 1937;

2. J. Clifton Hearn and Leland King were present in person;

3. It was provided by a motion that the company purchase the fixtures in the Bonita Nite Club in Eunice, New Mexico and finance the purchase thereof through the La Mac Store Fixture Company of Milwaukee;

4. The treasurer was authorized to execute the Company's note for \$1,000 payable to the La Mac Store Fixtures Company and a chattel mortgage on the fixtures together with a mortgage deed on Lot 7, Block 4, South Eunice Addition to secure said note. The minutes are signed by J. Clifton Hearn, vice-president, and Leland P. King, secretary-treasurer.

"Exhibit 109" recites; that

1. A special meeting of the stockholders of Standard Liquor Stores Inc., was held at 11:00 a. m., January 20, 1938;

2. Rolland E. Levers, 94 shares, was present in person;

491 3. Leland P. King, 2 shares, was present in person;

4. The board of directors were authorized to negotiate a sale of Lot 11, in Block 35, Original Town of Hobbs, for \$8,500 upon such terms as they may deem fit and advantageous to the best interests of the company; these minutes are signed,

ROLLAND E. LEVERS, president

LELAND P. KING, secretary.

"Exhibit 108" recites; that

1. A special meeting of the board of directors of the Standard Liquor Stores Inc., was held at 1:30 p. m., January 20, 1938;

2. Roland E. Levers and Leland P. King were present;

3. The board accepted the offer of Robert C. Prater of \$8,500 for Lot 11, in Block 35, Original Town of Hobbs;

4. The terms of sale were \$4,000 in cash and \$4,500 on or before February 1, 1939, at 5% interest. These minutes are signed.

ROLLAND E. LEVERS, president
LELAND P. KING, secretary.

"Exhibit 110" recites; that

1. A special meeting of the board of directors of the Standard Liquor Stores Inc., was held on December 26, 1939;

2. J. Clifton Hearn and Leland P. King, were present;

3. J. Clifton Hearn presided;

4. The secretary was authorized to negotiate a loan from the First National Bank of Roswell, New Mexico, not to exceed \$25,000 outstanding at any one time, and to give security for such loan and to execute in such form as required, notes and other evidences of this loan, etc., signed—
Leland P. King, secretary.

492 "Exhibit 112", recites; that

1. An annual meeting of the stockholders of the Standard Liquor Stores Inc., was held July 9, 1940, at 1:40 p. m.;

2. Roland E. Levers, 2 shares, was present in person;

3. Leland P. King, 2 shares, was present in person;

4. Oran C. Dale, 92 shares, was present in person;

5. J. Clifton Hearn, 2 shares, was present by proxy;

6. Rolland E. Levers, Oran C. Dale and Leland P. King were elected directors, each receiving 100 votes, these minutes are unsigned: (Rolland E. Levers has been reduced from 94 shares to 2 shares.)

"Exhibit 111" recites; that

1. The annual meeting of the board of directors was held July 9, 1940;

2. Rolland E. Levers, Leland P. King and Oran C. Dale were present;

3. Rolland E. Levers was elected president;

4. Oran C. Dale was elected vice-president;
5. Leland P. King was elected secretary-treasurer. These minutes are signed—Leland P. King, secretary-treasurer.
- “Exhibit 114” recites; that

1. The annual meeting of the stockholders of Standard Liquor Stores Inc., was held at 1:30 p. m., July 8, 1941;
2. Rolland E. Levers, 2 shares, was present in person;
3. Leland P. King, 2 shares, was present in person;
4. Oran C. Dale, 92 shares, was present in person;
5. J. Clifton Hearn, 4 shares, was present by proxy;
6. Rolland E. Levers, Oran C. Dale and Leland P. King were elected to the board of directors, each receiving 100 votes, signed

ROLLAND E. LEVERS, president.

- 493 “Exhibit 113”, recites; that

1. An annual meeting of the board of directors of the Standard Liquor Stores Inc., was held July, 1941;
2. Rolland E. Levers, Oran C. Dale and Leland P. King were present;
3. Rolland E. Levers was elected president, Oran C. Dale was elected Vice-president;
4. Leland P. King was elected secretary-treasurer. These minutes are signed

ROLLAND E. LEVERS, president.

- “Exhibit 99” recites; that

1. A meeting of the board of directors of the Smoke House Inc., was held April 9,
2. J. Clifton Hearn and Leland King were present;
3. J. Clifton Hearn presided;
4. A motion carried that a license be taken out in the Company's name for the Hollywood Bar, in Hobbs, signed

LELAND P. KING, secretary.

"Exhibit 100" recites; that

1. A meeting of the board of directors of Smoke House Inc., was held at 10:00 a. m., July 9, 1935;
2. J. Clifton Hearn and Leland P. King were present;
3. J. Clifton Hearn presided;
4. Motion carried to take out a license in the Company's name for the Worth Bar at Hobbs, signed

LELAND P. KING, secretary.

"Exhibit 103" recites; that

1. A meeting of the board of directors of Standard Liquor Stores Inc., was held October 9, 1935;
2. J. Clifton Hearn and Leland King were present;
3. J. Clifton Hearn presided;
4. Motion carried providing that the Company take out a license in its own name for Pete's Bar in Clovis, New Mexico, dating from Jan. 1, 1936, signed

LELAND P. KING, secretary.

"Exhibit 105" recites; that

1. A special meeting of the board of directors of Standard Liquor Stores, Inc., was held February 9, 1936;
2. J. Clifton Hearn and Leland P. King were present;
3. J. Clifton Hearn presided;
4. A motion carried providing that a license be taken out in the Company's name for the Crystal Bar, Monument, New Mexico, dating from December 1, 1936, signed

LELAND P. KING, secretary.

"Exhibit 106" recites; that

1. A special meeting of the directors of Standard Liquor Stores Inc., was held July 9,;
2. J. Clifton Hearn and Leland P. King were present;
3. A motion carried that a license be taken out in the

Company's name for the Green Lantern, Roswell, New Mexico, dating from July 1, 1936;

4. A motion carried providing that a license be taken out in the name of the Company for Palace Bar, dating from July 1, 1936, signed

LELAND P. KING, secretary.

"Exhibit 49", annual report to the State Corporation Commission of the State of New Mexico, for 1941, recites: that

1. The name of the company is the Standard Liquor Stores Inc.:

495 2. Its place of business is 124 North Main Street, Roswell, New Mexico:

3. Its business is that of retail liquor dealer and as otherwise specified in a certificate of incorporation:

4. \$12,500 was the authorized capital stock;

5. \$12,500 was actually issued and outstanding;

6. The directors were Rolland E. Levers, Oran C. Dale, Leland P. King, and J. Clifton Hearn:

7. The officers were Rolland E. Levers, president; Oran C. Dale, vice-president, and Leland P. King, Secretary-treasurer: 6

8. The date of the next annual meeting of the stockholders, was set as the second Tuesday in July, 1942. (Exhibit 12 shows that at the annual meeting of the stockholders meeting, held July 9, 1940, J. Clifton Hearn was not elected a director, though he is shown on the report to the State Corporation Commission as being a director in 1941.)

7 "Exhibit 50", same as Exhibit 49 for the year 1942, except that J. Clifton Hearn is not shown as a director and the date of the next annual meeting of stockholders is given as July 6, 1943.

"Exhibit 51". Certificate of dissolution of Standard Liquor Stores Inc., filed in the Office of the State Corporation Commissioner on October 7, 1943. (In connection with this exhibit, are the following exhibits.)

"Exhibits 51 a, 51 b, and 51 c"; certificates of discharge of duties, if any, required by the State of New Mexico, in the voluntary dissolution of a New Mexico Corporation.

"Exhibit 51 d", consent in writing of stockholders to dissolution of corporation dated September 25, 1943,

signed

Shares 2, Rolland E. Levers

Shares 96, Oran C. Dale

Shares 2, Leland P. King

Total 100

"Exhibit 51 e", certificate as to names and addresses of directors and officers of Standard Liquor Stores, Inc.

"Exhibit 51 f", affidavit of Oran C. Dale, vice-president, and Leland P. King as Secretary as to payment of taxes, dated September 25, 1943.

"Exhibit 51 G". Resolution that the sale of the assets of the Standard Liquor Stores, Inc., to Oran C. Dale on consideration that he acquire, surrender and deliver to said corporation all its outstanding common stock, which sale was consummated on June 30, 1943, be, and the same is hereby formally approved, ratified and confirmed this 26th day of August, 1943. Signed,

ROLLAND E. LEVERS, director

LELAND P. KING, director.

Affidavit of Oran C. Dale, subscribed and sworn to before W. L. Lile, Notary Public, August 26, 1943, that the resolution is a true and correct copy of the minutes of the Standard Liquor Stores Inc.

Ray E. Levers, and Forest E. Levers, operated a wholesale and retail liquor business under the name of Levers Brothers, prior to the enactment of the Federal Alcohol Administration Act. They maintained the principal office of the wholesale business at 209 East 2nd Street, Roswell, New Mexico, and a branch business at 615 Main Street, Hobbs, New Mexico, having both a wholesale and retail liquor dealer's stamp for both places. Their main retail business was carried on from the Smoke House, located at 124 North

Main, where they maintained a retail establishment. W. L. Lile was the bookkeeper (affidavit of Forest E. Levers, Exhibit 154.)

Levers Brothers continued in the wholesale liquor business, operating under Basic Permit P-8482 from March 21, 1936, until the death of Ray E. Levers, October 1, 1941. Forest E. Levers and the Estate of Ray E. Levers, deceased, continued in the wholesale liquor business under the name of Levers Brothers, operating under Basic Permit No. 13-P-37, from the death of Ray E. Levers, October 1, 1941, to the present.

April 6, 1935, the Smoke House, Inc., filed its Certificate of Incorporation with the State Commissioner of Corporations, for the State of New Mexico. The incorporators were Rolland E. Levers, a brother of Ray E. and Forest E. Levers, J. Clifton Hearn, an employee of Ray E. Levers and Leland P. King. The record does not disclose who Mr. King is, or what his connection is if any, with Levers Brothers, or any one or more of them. There were 100 shares of common stock of no par value issued and the capital with which the company was authorized to commence business was \$12,500. Rolland E. Levers was issued 94 shares, J. Clifton Hearn 4 shares, and Leland P. King 2 shares.

The contention of the United States is that the Smoke House Inc., the name of which was later changed to Standard Liquor Stores Inc., was at the time of its incorporation and has at all times since been either owned, or controlled and operated by Levers Brothers.

The Smoke House, at Roswell, New Mexico, was the main retail liquor establishment of Levers Brothers on December 17, 1934, (affidavit of Forest E. Levers, Exhibit 154).

Smoke House Inc., filed its certificate of Incorporation with the State Commissioner of Corporations of the State of New Mexico, April 6, 1935. The incorporators were Rolland E. Levers, J. Clifton Hearn and Leland King or Leland P. King. One hundred shares of capital stock of no par value was issued and the capital stated to have been invested is \$12,500. This capital is reported to the Commissioner of Corporations of the State of New Mexico as hav-

ing been all paid in—\$6,250 thereof in cash, and \$6,250
498 thereof in property purchased. Ninety-four of the
100 shares of outstanding stock was issued to Rolland
E. Levers and 4 shares thereof to J. Clifton Hearn and 2
shares to Leland P. King.

Exhibits 97 to 114 both inclusive disclose that Rolland E.
Levers was one of the incorporators of the corporation and
served on the board of directors and as president thereof
from the date of its organization in April, 1935, until the
date of its dissolution, October 7, 1943. He held 94 shares
of the outstanding 100 shares of capital stock from the date
of incorporation until sometime between January 20, 1938,
and July, 1940, and only 2 shares thereafter.

Exhibits 98 to 114 disclose that there were at least 5 meet-
ings of the stockholders and 12 meetings of the board of
directors during that time. Rolland E. Levers is shown in
these minutes as having been present in person at 3 stock-
holders and 3 directors' meetings, at 1 stockholders' and
one directors' meeting by proxy and to have been repre-
sented at 1 stockholders' and 1 board members' meeting by
his attorney in fact, J. Clifton Hearn.

He is not shown as having attended any of the meetings
prior to Jan. 20, 1938, when he is recorded as having been
present in person and as having presided. Exhibit 54 shows
that Rolland E. Levers, was not absent from his work as
State Revenue Collector for the State of Colorado at a
salary of \$150 per month from October 1, 1937 to August
18, 1938, while he is recorded as having attended the stock-
holders and directors meetings of Jan. 20, 1938 in Roswell,
New Mexico.

Exhibits 54 and 55 show him as not having been absent
from his work for the State of Colorado in 1940 nor in
July, 1941, yet he is recorded as having been present and as
having presided at a stockholders and directors meeting in
Roswell, New Mexico, on July 9, 1940 and on July 8, 1941.
Rolland E. Levers is reported as having been represented
at the meetings of the stockholders and directors meetings
of the Smoke House Inc., and by J. Clifton Hearn, his
499 Attorney in Fact.

J. Clifton Hearn is recorded as having been present in person at 2 stockholders and 9 directors meetings and as having acted as attorney in fact at 1 stockholders and 1 directors meeting and as having presided at each meeting at which he is recorded as having been present. J. Clifton Hearn testified, pages 76 to 84 of the record, among other things that he never attended, to his recollection a meeting of either the stockholders or the directors of the Smoke House Inc., or of the Standard Liquor Stores Inc.

J. Clifton Hearn testified (pages 76 to 84 of the record), among other things: that

1. He was well acquainted with Ray E. Levers during his lifetime and is well acquainted with Forest E. Levers and Rolland E. Levers, Oran C. Dale and Leland P. King;

2. At the time of the organization of the Smoke House, Inc., he was employed by the Pecos Valley Alfalfa Mills Co., of which Ray E. Levers was half owner;

3. Prior to going with the Pecos Company he had worked for Ray E. Levers for 6 or 7 years in connection with the wholesale hay business;

4. About the time of the organization of the Smoke House, Inc., Ray E. Levers, came by Hagerman, New Mexico, where witness was living and told him:

(a) That Levers Brothers could no longer operate retail outlets on account of a change in the law;

(b) That a corporation was being formed to operate the Smoke House, which had previously been operated by Lever Brothers;

500 (c) That Rolland E. Levers was the chief stockholder of said corporation;

(d) That in order to meet requirements as to the number of directors it would be necessary to have someone hold qualifying shares; and

(e) Asked permission to put a few shares of stock in the name of the witness and to have him act as a director and officer of the corporation, which, on account of his long connection with Ray E. Levers, the witness readily assented to;

5. He never saw any stock, but was informed by Ray E. Levers that he was the owner of a few shares and had been made a director and vice-president of the corporation;

6. He never to the best of his knowledge and recollection attended a meeting of the stockholders or of the board of directors and never presided at a meeting of either;

7. He has a vague recollection of having signed one set of minutes and possibly more—they were either mailed to him or he signed them sometime when he happened to be in Roswell;

8. He paid for none of the stock in his name, received no dividends and does not know if he owns any of the stock at this time;

9. He took no active interest in the affairs of the corporation with the exception of possibly signing some minutes and notes. Some notes were mailed to him in Chandler, Arizona by Ray E. Levers with the request that he sign them on behalf of the Standard Liquor Stores, Inc. As he remembers it, these notes were all made to the First National Bank of Roswell, in connection with the financing of the Standard Liquor Stores Inc.;

10. He has never discussed the formation of Smoke House Inc., or Standard Liquor Stores Inc., or the operation of any of the retail outlets operated by Standard Liquor Stores Inc., with either Forest E. Levers, Billy Wilson or Mr. Lile.

501 W. J. Wilson, testified (pages 112 to 136 of the record): that

1. At one time Ray Levers told him that they didn't have a business system in connection with Standard Liquor Stores Inc., and asked him if he would take the job of looking after them. Witness did not then think he had the time to do so;

2. In 1937 he was again making out the income tax returns for Levers Brothers, and after he had finished, Ray Levers offered him the job of what Mr. Levers called "auditor" for the Standard Liquor Stores;

3. He went to the office of Levers Brothers. Ray Levers

had done the talking up to this time, but both Ray and Forest were present at this meeting and they made a deal under which witness assumed the job:

4. At the time he went with the Standard Liquor Stores, Inc., they had a chain of some seven stores: The Smoke House and the Green Lantern, in Roswell, Pete's Bar, afterwards re-named Standard Bar in Clovis, Worth Bar, the Hollywood Bar and the S.L.S. Bar in Hobbs, and the Crystal Bar in Monument, New Mexico.

5. There was no accounting system that controlled the operation of these bars. The witness suggested to Ray Levers that some kind of a controlling system be *pu* in, in order to keep proper records of the daily and monthly business of these seven stores. This suggestion was agreed to:

6. After installing this *sytem*, witness assumed his other duties as auditor of the Standard Liquor Stores Inc., which included:

(a) visiting the several stores at different times;

(b) becoming familiar with the way things were being operated;

(c) reporting mistakes or wrong methods, if any, to see if they couldn't make the necessary changes or improvements;

502 7. At times he gave orders to the managers of these different stores. Sometimes these orders were his own ideas but usually they were arrived at after consultation with Ray Levers;

8. During the course of his employment he never received for transmittal and never transmitted to any of the managers of any of the stores, any orders from Rolland E. Levers, Leland P. King or J. Clifton Hearn;

9. Orders to managers with respect to purchases of merchandise were based upon two lines of merchandise, viz., Blatz and Walter's Beer and the Schenley line of liquors. Levers Brothers handled these above mentioned lines;

10. Witness knew nothing of the leasing of Pete's Bar in Clovis to Mr. Wright of Artesia until after the preliminaries were gone through. He does not know who carried

on the negotiations. It was Mr. Ray Levers who told him that it was going to be leased to Wright. Later, the witness was told that it was going to be leased to a man by the name of Kirk and he was requested to go with Oran C. Dale to take an inventory of the fixtures and glassware, the property of the Standard Liquor Stores Inc., as Kirk was moving in some equipment of his own:

11. Witness thinks he set up books showing the capital account of the company as \$12,500:

12. He did something to make the capital investment correspond to the amount of capital stock issued, but he had no figures or data or any original investment or anything of that sort:

13. Witness knew there was a sale made to Mr. Prater of the Standard Liquor Stores' property known as the Palace Bar at Hobbs. He had a discussion with Ray and Forest Levers about entries to be made regarding the money that was received but could not remember the outcome:

14. Witness recognized Exhibit 73, a contract with Mr. Stokes on the S.L.S. Bar at Hobbs. He knew nothing of its execution, but collected the money from Stokes after he came to the Standard Liquor Stores Inc.:

15. He recognized Exhibit 71 and stated that it appeared to be a memorandum of rent, paid by the Crystal and Hollywood Bars, paid the rest to Forest E. Levers on 3/31/38:

16. Witness recognized Exhibits 74 and 75. Exhibit 74 being a note of the Standard Liquor Stores Inc. to Levers Brothers for \$1885.43 and 75 he states, was probably a receipt for said note.

17. He further states that this note was probably given to cover an open account of one or more of the stores operated by the Standard Liquor Stores Inc., as they were at this time attempting to get those accounts off the books:

18. Witness identified Exhibit 73 as a letter of August 9, 1939, written by him to Frank Kirk at the instructions of Ray E. Levers. This letter advised Kirk that as they were charging no rent for the building, that he should keep the property up:

19. The witness testifies that he did not write Exhibit 79, advising Mrs. Billie Smith of the Worth Bar, Hobbs, New Mexico that she was not to make any purchases of any liquor from any wholesaler other than Levers Brothers of Hobbs, but that he wrote Exhibit 80 at the direction of Ray Levers which authorized Mrs. Smith to buy certain liquors;

20. Most of the discussions by witness about these outlying places were with Ray E. Levers. Forest wasn't always there. Forest was on the road a great deal, but sometimes he was present;

504 21. Witness recognized Exhibit 81 as having been written by him, setting out the policy of restricting purchases;

22. Witness recognized Exhibits 82 and 83 as being written by him after consultation with Ray Levers;

23. Witness discussed matters of the Standard Liquor Stores Inc., with Ray and Forest Levers because *there* explanation always was that they were representing their brother's interest, that he had his own affairs in Colorado;

24. Witness stated that he wrote Exhibit 84, February 28, 1938, transmitting minutes of meeting to Rolland E. Levers at Rocky Ford, Colorado for the *later's* signature;

25. He wrote Exhibit 85 to the National Cash Register, claiming ownership for the Standard Liquor Stores Inc., in a cash register in the Hollywood Bar in Hobbs;

26. Witness wrote Exhibit 86 to Ernest Bridges of Hobbs, New Mexico, directing that purchases be made from Levers Brothers under the instructions to do so by Ray E. Levers;

27. He wrote Exhibit 87, under instructions from Ray E. Levers, advising that it was desirable to remove Sam Newsom who had charge of the Hollywood Bar in Hobbs and to secure someone to take his place, June 20, 1937;

28. Witness did not prepare Exhibit 127, it was prepared by Leland King, but witness signed it under the direction and instruction of Ray Levers. He does not know whether he made an entry in the Standard Liquor Stores' books or not, but presumes that he did. (This Exhibit is a prom-

issory note of Standard Liquor Stores Inc., to the La Mac Store Fixtures Company for \$5,000, signed by W. J. Wilson, auditor and attested by Leland P. King, treasurer). Witness does not know what it was for, but presumed that it was a debt owing to them from the time before he came with the company:

505 29. He thinks he made an entry of some money borrowed before his advent with the company in the books of the Standard Liquor Stores Inc., and he had no access to the books of Levers Brothers and never made an entry thereon.

W. E. McLaughlin testified (pages 84 to 94 of the record): that

1. He met Forest E. Levers in El Paso, probably in 1935. Forest told the witness that Ray wanted him to go to Hobbs to the Hollywood Bar in the Hardin Hotel. McLaughlin's father didn't want him to go to Hobbs;

2. Later in May of 1935 or 1936, he was employed by Ray E. Levers as manager of the Green Lantern Bar in Roswell, New Mexico, succeeding Sam Newsom. He was to be

(a) bartender on night shift;

(b) take care of the buying;

(c) hire the help;

3. The license when he went to the Green Lantern, was in the name of Sam Newsom and when the new license came due in June, Ray Levers and Mr. Lile, the bookkeeper and Leland King and the witness, had a conference at which time Ray Levers stated that they were changing the license to the name of the New Mexico corporation called Standard Liquor Stores Inc., for the reason that a wholesaler could not operate a retail outlet;

4. He was instructed by Ray Levers to buy all merchandise from Levers Brothers;

5. Forest Levers used to tell him to push certain brands of whiskey;

6. Mr. Lile, the bookkeeper for Levers Brothers also gave

him some advice. He would call and take inventory and witness would pay for the whiskey he had received;

506 7. Mr. Billy Wilson would also sometimes give him advice;

8. Practically all purchases were made from Levers Brothers;

9. At the request of Ray Levers, witness signed a lease on the Hollywood Bar about a year after he had commenced working for Levers Brothers. Ray Levers said he wanted to put the lease in McLaughlin's name as he had had trouble with the party then holding it;

10. He was hired by Ray Levers to work for the Standard Liquor Stores and for the entire time he worked he took orders from Ray Levers;

11. Witness never received any instructions from Rolland E. Levers, or from J. Clifton Hearn.

W. P. Clark testified (pages 95 to 99 of the record); that

1. He owned the premises known as the Worth Hotel in Hobbs, New Mexico, which is now burned down. In the fall of 1935 he leased the bar which was next to the lobby to Forest Levers;

2. The lease was drawn to Levers Brothers, but they did not sign it and another lease was returned to him leasing the bar to Standard Liquor Stores Inc. Witness refused to approve the change until he was assured by Forest Levers that he was still leasing to Levers Brothers, that Levers Brothers would stand behind the lease and pay the bills, but that the check would come through the Standard Liquor Stores;

3. Levers Brothers had the lease for two years. He thinks from June 30, 1937. The lease ran with the fiscal year of the Federal license;

4. Mr. Levers stated that he had to separate his retail and wholesale business, due to some Federal provision.

5. The only persons the witness had any business with was Forest Levers and Billy Wilson. Wilson came in later as bookkeeper. Witness does not think that he ever met either Ray E. or Rolland E. Levers.

507. Samuel L. Mangham testified (pages 101 to 109 of the record); that

1. He had been engaged in the cafe and bar business for about 35 years off and on;

2. He was hired by Ray Levers around the 1st of August, 1939 as manager and bartender of the Cantina Bar at Roswell, New Mexico;

3. Witness was to

a. run the place

b. keep up the supplies

c. hire the help

d. tend bar at night and make out a list of "wants"

e. the bartender would call for the supplies during the day;

4. All purchases were made from Levers Brothers because it was Levers Brothers Store and they were supplying it, Ray Levers gave him all his instructions;

5. About April 1, 1941, Ray Levers transferred him to the Old Heidelberg Inn where he worked for approximately three months.

6. He made all purchases of goods while at the Heidelberg Inn from Levers Brothers, because Levers Brothers sent him over there, still Levers Brothers liquor saloon;

7. Levers Brothers had a field man who came and took the supply orders and the supplies came out from Roswell.

H. C. Garrison testified (pages 109-112, record); that

1. He is the Mayor of Dexter, New Mexico.

2. He recognized Exhibit 125 as a request by the Standard Liquor Stores, Roswell for the transfer of a liquor license the town of Dexter agreeing; (this request is dated March 28, 1942)

508 Mrs. James Daily testified (pages 131 to 141 of the record); that

1. She and her husband operated the Central Bar, Tu-

meuari, New Mexico, from about December, 1939 to December 1941;

2. Her husband was inducted into the United States Armed Forces in January, 1941;

3. She continued the operation of the bar after her husband was inducted with the aid of a manager;

4. She purchased liquor from Levers Brothers and others during the early part of her operations;

5. Max Cabber, who represented Levers Brothers would come to her place each week and take orders on Mondays and the goods were delivered on the following Thursday;

6. She would pay Mr. Cabber if she had the money, if she did not have the money the goods were credited. She finally became indebted to Levers Brothers in a sum of approximately \$1700;

7. She and Forest E. Levers had many discussions after the bill became large. Levers wanted her to buy all her liquor from Levers Brothers and finally told her, she thinks in August, that she would purchase 100% from Levers Brothers or he would close the place;

8. She gave to Levers Brothers, at the suggestion and insistence of Forest E. Levers, a demand note for \$1745.15 secured by a chattel mortgage on the business. This note was dated March 20, 1941;

9. The Standard Liquor Stores, Inc., by its agent, W. L. Lile, pleading assignment of this note and mortgage, commenced action to foreclose (Exhibit 129). This resulted in

(a) the filing of an answer by the defendant (Exhibit 130)

(b) the signing of a stipulation for a judgment in favor of the plaintiff by both parties, (Exhibit 131)

509 (c) defendant giving to the plaintiff a bill of sale for the business (Exhibit 132), and

(d) an assignment of state and city liquor licenses for the Central Bar, (Exhibit 133);

10. Witness turned the place over to Forest E. Levers. W. L. Lile was present;

14. Witness held all discussions and did all business with Forest E. Levers. W. L. Lile or Ray E. Levers may have been present at times, but the business was all conducted with Forest E. Levers.

P. V. Hart, testified (pages 141 to 148, of the record); that

1. He wrote a letter to Rolland E. Levers; Standard Liquor Stores, Inc., at Roswell, New Mexico upon learning that a manager was wanted for the Green Lantern Bar at Roswell;

2. He received a letter in about three days, advising him that Ray Levers would be in El Paso in a day or two to talk with him;

3. After meeting Ray Levers and at Mr. Levers' request witness went to Roswell, talked the matter over with Forest Levers, as suggested by Ray, and made arrangements to take the position;

4. What discussions there were on matters of operation, were with Ray Levers;

5. Ray Levers gave the witness to understand that they would like to sell their own product, Schenley whiskies and Blatz Beer;

6. The main products sold by the witness were Schenley whiskies and Blatz Beer;

7. Witness made a trip to El Paso, Texas at the request of Ray Levers in an effort to secure the opening of a Chinese restaurant in Roswell. This trip was made with the understanding that he would be reimbursed for his expenses. W. J. Wilson reimbursed him;

510 8. Witness was given no right as manager to purchase from outside houses in any amount;

9. Ray Levers told the witness at one time, that he should be a salesman and sell what he had on hand;

10. When a salesman from a company other than Levers Brothers came in to sell his goods, witness referred him to Levers Brothers;

11. Ray Levers transferred the witness to the Cantina

Bar after the Green Lantern had been sold to Roberts. The witness was at the Cantina Bar for about three months and the same policies were followed as had been followed at the Green Lantern:

12. Witness at no time received any orders from Rolland E. Levers, Leland King, or J. Clifton Hearn.

Alfred C. Wright testified (pages 149 to 154 of the record): that

1. His brother-in-law bought the stock of goods in the Standard Bar at Clévis, New Mexico, from Levers Brothers in June, 1938, for the witness to operate:

2. He also purchased, but was to pay for at the rate of \$30.00 per month, the fixtures and equipment of said saloon:

3. Ray and Forest Levers were both present in his brother-in-law's place of business in Artesia, when the deal was first opened:

4. Witness made all payments to Ray Levers;

5. Ray Levers complained that the witness was making purchases from wholesale dealers other than Levers Brothers and insisted that he make all purchases from Levers Brothers:

6. The witness signed a chattel mortgage to the Standard Liquor Stores Inc., securing a note for the fixtures in said stores (Exhibit 134). The place had been purchased from Levers Brothers and no explanation was ever made
511 as to why they desired the mortgage to run to the Standard Liquor Stores Inc., and witness made no inquiry.

James Brister testified (pages 154 to 171 of the record): that

1. He had kept books for the Yucca Cocktail Bar in Carrizozo, New Mexico, since the opening thereof in 1939 until sold by Mrs. Loudon:

2. Mrs. Loudon purchased her supply from different wholesalers, until she became rather heavily indebted to

Levers Brothers, from which time on practically all of her purchases were made from them;

3. Forest Levers suggested that Mrs. London execute a personal note and secure it by a chattel mortgage on her interest in the business in favor of Levers Brothers for the amount of her indebtedness to them and that she turn the management of the business over to the witness to see if it could be worked out. This was done and the witness took charge as manager about the middle of June, 1931;

4. Arrangements were later made whereby Mrs. London gave to the Standard Liquor Stores Inc., a bill of sale to the business, an assignment of all lease hold rights that she might have on the premises and an assignment of her state and city liquor licenses (Exhibit 136), for which she was to receive the consideration of \$100 and the satisfaction of her note and release of the mortgage. Levers Brothers by Forest E. Levers, released said chattel mortgage (Exhibit 135);

5. Forest E. Levers, accompanied by Leland King talked to the witness. Levers did the talking and introduced King as having something to do with the Standard Liquor Stores Inc. It was agreed by the witness and Forest Levers that witness would take the management of the Yucca Bar for the Standard Liquor Stores Inc.;

6. Witness made all purchases as manager from Levers Brothers. Their representative, Max Cabber came to his place of business and took the orders. The goods came from Levers Brothers, whether witness had ordered them or not. Some goods were delivered that were not ordered by the witness;

7. Witness signed the invoices referred to in his letter, Exhibit 137, at the request of Forest E. Levers;

8. Exhibit 138 is a record of purchases made by the Yucca Bar, from Levers Brothers, signed by Mr. Lile, witness did not understand it.

9. Exhibit 139 is a letter from Forest E. Levers, instructing witness as to the renewing of the lease on the Yucca Bar in the name of the Standard Liquor Stores Inc., and to give Max when he delivered said letter, the daily reports on the

place. These reports on the operation of the Yucca Bar were to be made according to instructions given the witness by Forest E. Levers and were made to the Standard Liquor Stores, Inc.:

10. The Yucca Bar was sold after a short while to Irma Todd:

11. The negotiations for the sale of the bar were conducted by Forest E. Levers with Frank Todd, the husband of Irma Todd. No one was present from the Standard Liquor Stores. Witness was present at these negotiations:

12. The agreement for the transfer of the property was reached the one day, but could not be closed until the Standard Liquor Stores, Inc., could send a bill of sale:

13. After the sale of the place was accomplished, witness closed its affairs. All debts were paid and a small amount of remaining money was paid over to Forest E. Levers:

14. The sale price of the business was approximately \$2400.00. The witness handled and counted the money and handed it over to Forest E. Levers. The witness knows of no one being present who represented the Standard Liquor Stores Inc.:

15. The account of the bar had been carried in the name of the witness. The witness drew a check to himself (Exhibit 140), for the final balance—endorsed it, cashed it, received the money on it and paid the money over to Forest E. Levers. (The date of this check is November 24, 1941.)

Herman Platt testified (pages 172 to 202 of the record): that

1. He examined the books of Levers Brothers and also these of Standard Liquor Stores Inc.; during the period August 17, to September 2, 1942;

2. He examined the minute book of Standard Liquor Stores, Inc.:

3. The Standard Liquor Stores prior to 1937, had no books of control accounts.

4. Subsequent to 1937, the Standard Liquor Stores, Inc.,

had more books than they had during the time previous thereto. They had no complete set of control books showing assets, liabilities or any of the capital items that should be kept by a corporation:

5. They had no profit accounts and no compilation of expenses and earnings as such;

6. The books were insufficient to enable one to tell whether or not Standard Liquor Stores Inc., was making a profit;

7. The stock books of S.L.S.I., showed 92 shares of the 100 shares outstanding issued to Oran C. Dale and 8 shares scattered;

8. The company had no assets account. There were operating accounts based on the daily reports of the different stores;

9. Standard Liquor Stores, Inc., had no entries of any kind in its books concerning purchases or sales of stores;

514 10. From the examination of the records of both firms and from knowledge of transactions that actually took place, witness came to the definite conclusion that the affairs of both companies were so intermingled and intertwined that short of a complete re-writing of the books of both companies, it would be impossible to separate them. He would say that the transactions of Standard Liquor Stores, Inc., are in fact the transactions of Levers Brothers;

11. The witness identifies and explains Exhibits 141 to 153, both inclusive, as being photostats of original pages of ledgers kept by Levers Brothers with the exception of Exhibit 142, which is from a columnar journal cash book;

(a) "Exhibit 144" is from the 1937 ledger. This exhibit shows an entry of a credit memorandum, SLS, Inc. Notes receivable account is credited with \$1885.43 which reduces the assets accounts in that amount.

(b) "Exhibit 142" from Columnar journal cash book for June, 1938, shows an entry on the 16th line from the top thereof, which indicates that Levers Brothers received in cash \$8,275 and this money had been transferred from the

Lea County Bank, that \$4,000 was received March 18, 1938 and \$4,275 on April 1, 1938, and that these payments were made out of the sale of real estate in Hobbs, New Mexico;

(c) "Exhibit 143" is from 1936 ledger, "Notes Payable". There are three entries of \$500 each, checks of SLS Inc., which reduces "Notes Payable" by Levers Brothers to the First National Bank. July 24 there is shown a credit of notes payable, \$10,000 received from the First National Bank. There are a number of entries on this Exhibit, which indicate that Levers Brothers made payments to the
515 First National Bank on account of Smoke House notes;

(d) "Exhibit 144" carries an Entry on December 31, 1937, an adjustment to undivided profits of \$14,790.55. This entry arbitrarily reduced the notes payable account by that amount;

(e) "Exhibits 145 and 146" are respectively from 1937 and 1938 ledgers. Exhibit 146 is a continuance of 145, both are headed "Hobbs real estate, Palace Bar." Exhibit 145 shows cash investment of \$3,508.92, January 1, 1937. Repairs during the year of \$382.84 and appreciation surplus of \$5,108.24, giving a credit balance forwarded to the 1938 ledger of \$9,000. Exhibit 146 shows a credit balance of \$9,000 January 1, 1938. June 29 sale (\$4,000—3/18/38) (\$4,275—4/38) June 30 entry shows transferred to surplus from appreciation \$750.00;

(f) "Exhibit 147" is from a 1936 ledger. Entry June 5 shows "Interest to 6/1/36" Worth Bar, charged to interest and expense of Levers Brothers. Entry June 17, "First National Bank" Smoke House note, April 15, \$120.66 charged to Levers Brothers interest expense;

(g) "Exhibit 148" from 1937 ledger. The account is a combination of notes receivable and notes payable and is apparently a consolidation of both interest expenses and interest earned. Entry on line 5, January 28, reads "Check No. 5020, interest on \$4,500 note for three months, \$90.00". A similar entry on April 28. Entry of June 25th, "Check No. 5044 First National Bank, six months, 10th note, \$400.00, 4 months' interest on \$4,500—\$520.", which specifies that

\$120.00 of the \$520.00 is four months' interest on the \$4,500 note.

516 (h) "Exhibit 149" is from 1936 ledger and is entitled "Rent account, Palace Bar." Entry of

May 15, received \$ 60.00 from Z. Johnson

May 15, received \$ 600.00 back rent

June 22, received \$ 125.00 back rent

\$ 125.00 Sam Newsom

\$ 100.00 Stanley

\$ 100.00 Stanley Bros.

\$ 100.00 Stanley Bros.

\$1210.00

(i) "Exhibit 150" is from 1936 ledger and is headed "Hobbs Real Estate, Palace Bar Building, S.L.S.". This shows brought forward from the 1935 ledger \$2,013.09, cash investment. There is listed a number of improvements and a note for \$700. Shown by the last entry on December 31, 1936, cash investment of \$3508.92;

(j) "Exhibit 151" is from 1936 ledger account "Stand-ard Liquor Stores Inc.". An entry June 30, charge \$750, paid to clerk of city of Hobbs for one-half license for Palace Bar. The next entry, shows \$750 charges as having been paid to city clerk, Hobbs, for one-half license for Worth Bar. On July 3rd, credited the account with \$1500 with a notation "Two Levers Brothers checks" of \$750 each. The same day received \$1500.00 with a notation, "for loan." July 25, \$500 is credited to S.L.S., Inc., with notation "check";

(k) "Exhibit 152" is from the 1936 ledger headed "Real estate Eunice, Lots 6 and 7. Entry of January 18, shows cash book \$155, charges \$50.00. An entry February 20, charges \$200 for real estate deed. May 7, credits sales summary \$300 December 3, closes the account with \$50.00 profit to the S.L.S.

517 (l) "Exhibit 153" headed "Mr. and Mrs. Manuel, Lot 6 Eunice". Entries March 3 to December 19, 1937, receipt of rents \$90.00.

Ray E. Levers and Forest E. Levers, doing business as Levers Brothers, were, prior to the enactment of the Federal Alcohol Administration Act, operating in the Southeastern part of New Mexico among other lines a wholesale and retail liquor business. The principal place of the wholesale business was in Roswell, with a branch operating in Hobbs. The greater part of the retail business was carried on at the place known as the "Smoke House" in Roswell. (Affidavit of Forest E. Levers, Exhibit 154.) A corporation, the Smoke House Inc., the name of which was during 1935 changed to the Standard Liquor Stores Inc., was organized by Levers Brothers under the laws of the State of New Mexico during the winter or early spring of 1935. The articles of incorporation were filed in the office of the Corporation Commissioner for the State of New Mexico, April 6, 1935. Rolland E. Levers, J. Clifton Hearn and Leland P. King appear as the incorporators. The articles of incorporation provide for the issuance of 100 shares of stock of no par value and that \$12,500 was the capital investment.

The purpose of the incorporation was to conduct the retail liquor business known as the "Smoke House" in Roswell, which up until that time had been owned and operated by Levers Brothers. Ray E. Levers contacted J. Clifton Hearn, who had for years been his employee in different capacities, and requested that some qualifying shares be placed in his name, and that he act as a director and officer, to which Mr. Hearn acceded. Ray E. Levers explained to Mr. Hearn that the corporation was being created in order to take over the business of the "Smoke House" for the reason that Levers Brothers, on account of the federal law, could no longer operate a retail liquor business; that Rolland E. Levers, a brother of Ray E. and Forest E. Levers, was the principal stockholder.

A report to the State Commissioner of Corporations recites that the \$12,500 capital with which the company was to commence business, as stated in its articles of incorporation, was fully paid in, \$6,250 in purchase of property, and \$6,250 in cash. The minutes of the stockholders' and directors' meetings contained in the record show that Rolland E. Levers attended but a few meetings. J. Clifton Hearn

is recorded as having attended and as having presided at nearly all of those meetings, yet the testimony of J. Clifton Hearn shows that he never attended either a stockholders' or directors' meeting; that he signed some minutes and signed some notes for the company, but that both the minutes and the notes had either been mailed to him to sign or he had signed them at some time when in Roswell. That other than this he had no interest in the affairs of the company and never gave any orders or instructions as to the conducting of its affairs. The record of employment of Rolland E. Levers by the State of Colorado, shows that he was not absent from his work in Colorado at any of the times he is shown by these minutes as having been present in person and as having presided at stockholders' and directors' meetings in Roswell, New Mexico.

The testimony of Mr. W. P. Clark, owner of the Worth Hotel in Hobbs, is that Forest E. Levers told him that although Levers Brothers were leasing the bar in the hotel and would pay the rent thereon, the checks would come through the Standard Liquor Stores Inc. That Mr. Levers stated to him that the reason for placing the lease in the name of the Standard Liquor Stores Inc., was that the provisions of the federal law required him to keep his wholesale and retail liquor business separated.

The testimony of W. J. Wilson shows that he was employed in 1937 by Ray E. Levers as auditor of the Standard Liquor Stores Inc., that at the time he entered the employ of the company they had a string of seven retail liquor stores. (At the time of the dissolution of Standard Liquor Stores Inc., in 1943, they had six liquor stores, and between the time of incorporation and the time of dissolution from April 6, 1935, to October 7, 1943, the Standard Liquor Stores, Inc., operated at different times a number of different stores.) The books of said corporation according to the testimony of Mr. Platt, show no purchases and no sale of any liquor stores. The testimony of Mr. Wilson, the auditor of the company, is that he at no time did any business with Rolland E. Levers, president, or with J. Clifton Hearn, vice-president of the Standard Liquor Stores Inc. He discussed all matters with Ray E. Levers or Forest E. Levers

or with both, conducted all the business pertaining to the corporation with either Ray E. Levers or Forest E. Levers or both and acted under the instructions, usually of Ray E. Levers, although both brothers were sometimes present.

The testimony of Mr. Wilson, further shows that there were no books of controlling accounts maintained by the Standard Liquor Stores, Inc., that all that was maintained was a daily report of the transactions at the different stores, that after discussion with Ray E. Levers, it was decided that he would install such a system and that he believed he did set up books of capital accounts and of the capital investment. He states that he did something to make the capital investment correspond with the number of shares issued. He executed a note of \$5,000 and a chattel mortgage on certain fixtures as auditor of the Standard Liquor Stores

520 Inc., running to the La Mac Store Fixtures Company of Milwaukee, Wisconsin, at the direction of Ray E. Levers. He did not know what the face of the note represented, but supposed it was money owed to the La Mac Store Fixtures Company before he became connected with Standard Liquor Stores, Inc. He further testified that he had no access to Levers Brothers' books and had never made an entry therein. There is nothing in the record that shows that the auditor was authorized to execute company notes or mortgages as auditor of the company.

The records shows; that

1. Lot 11, Block 35 of the original Town of Hobbs, in which was conducted the Palace or SLS Bar, was on October 2, 1934, transferred to Levers Brothers by Warranty Deed;
2. It was transferred by Levers and Levers, February 18, 1935, to D. L. Parker by Warranty Deed;
3. The same date, February 18, 1935, a mortgage deed from D. L. Parker to O. C. Dale in the amount of \$6,000;
4. Above mortgage was satisfied August 18, 1937;
5. It was transferred by D. L. Parker to Standard Liquor Stores, July 31, 1937 (18 days before the satisfaction of the mortgage).

6. It was transferred by the Standard Liquor Stores by Warranty Deed to Robert C. Prater, March 8, 1938;

7. Mortgaged by Robert C. Prater to R. E. and F. E. Levers, March 8, 1938 for \$4,500;

8. Assignment of mortgage by R. E. Levers and F. E. Levers to the Lea County State Bank, March 31, 1938;

9. Release of mortgage by the Lea County State Bank, January 9, 1938, filed March 4, 1939; (released by the Lea County State Bank prior to its having been given to R. E. and F. E. Levers and prior to the assignment of R. E. and F. E. Levers to the bank (Exhibit 53)).

There is nothing on the books of the Standard Liquor Stores Inc., showing any money paid out for the purchase of this property and no authority shown in any of the minutes included in this record, authorizing such payment. There is a set of minutes of the Standard Liquor Stores Inc., showing authority to sell and the sale at meetings in Roswell, New Mexico, presided over by Rolland E. Levers at a time when the record of his employment shows him to be not absent. On the other hand, the books of Levers Brothers, testimony of Mr. Platt, show a receipt of \$8,250 transferred from Lea County Bank at about the time this sale was made.

There is nothing on the books of Standard Liquor Stores Inc. that shows any authority for the purchase of Lot 7, Block 4, South Eunice Addition, in Eunice, New Mexico, occupied by the Bonita Nite Club.

1. This property was transferred to W. L. Lile (book-keeper for Levers Brothers) January 27, 1936 by Warranty Deed.

2. Lile transferred it to Jack Striff and Wife, May 4, 1936 by Warranty Deed.

3. Jack Striff and Wife mortgaged it May 6, 1936 to Levers Brothers for \$1,600.00.

4. Lien against Jack Striff and Wife filed August 21, 1936 for \$530.52.

5. Lis pendens filed against the property January 23, 1937, \$692.52.

6. Special Master's deed, Oran C. Dale, Jr., Special Master, to Ray E. Levers, et al., February 27, 1937, Lots 6 and 7.

7. Warranty Deed, Ray E. Levers, et al. to Standard Liquor Stores, covering Lot 7, March 20, 1937. (Exhibit 52.)

522 Minutes of a meeting of the board of directors of the Standard Liquor Stores Inc., signed by J. Clifton Hearn (who testified he never attended a meeting) on March 9, 1937, subsequent to the transfer of the property to R. E. Levers, et al., but prior to its transfer by Ray E. Levers, et al. to the Standard Liquor Stores, Inc., authorized the purchase of the fixtures of the bar and the giving of a mortgage on the real estate to secure the purchase of said fixtures.

The stock of goods and the fixtures of the Standard Bar at Clovis were sold to Mr. Wright by Ray E. and Forest E. Levers. Mr. Wright paid cash for the stock of liquors and was to pay \$30.00 per month on the purchase price of the fixtures. The bar was purchased for Mr. Wright by his brother-in-law. Later Mr. Wright gave a note and a chattel mortgage on the fixtures for the purchase price of the fixtures, which ran to the name of the Standard Liquor Stores, Inc. Mr. Wright's testimony is that there were no dealings with anyone representing the Standard Liquor Stores Inc., in the sale of this property. He does not know why the note and mortgage were made to run to them as the purchase was made from Ray E. and Forest E. Levers and all money paid was paid to Ray E. Levers.

The Central Bar at Tucumcari, New Mexico, was purchased from Mrs. James A. Daily; under a forced sale, by Forest E. Levers. The bill of sale and the transfer of leasehold rights on the building and assignment of state and city liquor licenses for the business, all went to the Standard Liquor Stores, Inc., though the purchase price was a settlement of a promissory note, secured by a chattel mortgage on the bar fixtures given by Mrs. Daily to Levers Brothers for the unpaid balance of the purchase price of liquors pur-

chased by Mrs. Dailey from Levers Brothers when she was in business.

523 Forest E. Levers purchased, under what might be termed a forced sale, the Yucca Cocktail Bar in Carizozo from Mrs. Gladys Loudon. The bill of sale to the property, assignment of leasehold rights on the building, and of state and city liquor licenses went to the Standard Liquor Stores Inc. The agreement of purchase was that the Standard Liquor Stores Inc., would pay Mrs. Loudon \$100, and Levers Brothers would release her from her note secured by a chattel mortgage on the fixtures, given by Mrs. Loudon to Levers Brothers for the unpaid balance of the purchase price of liquors purchased from Levers Brothers while she was in business.

The testimony of Mr. Brister shows that while he operated this bar after its sale by Mrs. Loudon, for the Standard Liquor Stores Inc., he took all his directions and instructions from Forest E. Levers; that the property was sold a little later to Irma Todd; that all negotiations for the sale were had by her husband, Frank Todd and Forest E. Levers; that the purchase price was \$2,400; that this money went through the hands of Mr. Brister, who counted it and paid it over to Forest E. Levers; that the account of the bar was in Mr. Brister's name; that Mr. Brister closed the accounts of the Yucca Bar, paid all bills, and paid a small amount remaining over to Forest E. Levers; that the bank account had been carried in Mr. Brister's name; that he drew the remainder of this account by writing a check for \$150 to himself, endorsed the check, secured the money on it, and turned this money over to Mr. Levers.

The testimony shows that in their transactions with all the bars operated by the Standard Liquor Stores Inc., and in their dealings with Mrs. Dailey and Mrs. Loudon, prior to the taking over of these two bars, Levers Brothers insisted that all purchases made by the bars be made from Levers Brothers, and they gave as their reason for their handling the affairs of the Standard Liquor Stores Inc., that it belonged to their brother and they were looking after his interests.

Exhibits 115 to 124, both inclusive (photostats of reports made by wholesale liquor dealers of New Mexico to District Supervisor of Alcohol Tax Unit, Denver on Form 52b), show that practically all of the liquors purchased by the several stores operated by the Standard Liquor Stores Inc., over the years of its existence were purchased from Levers Brothers. Most of them running over 90% and some as much as 100% of purchases.

The several managers of the stores operated by Standard Liquor Stores Inc., as well as W. J. Wilson, the auditor thereof, show in their testimony that there was no business transacted with either the president, Rolland E. Levers, or the vice-president, J. Clifton Hearn, of said company, but that they were hired by Ray E. or Forest E. Levers, received their orders from and conducted the affairs of the stores through instructions from either or both of these men, either in person or through the auditor, W. J. Wilson.

From the record of this case I find:

1. Levers Brothers, Ray E. Levers, and Forest E. Levers, until October 1, 1941, and Forest E. Levers and the Estate of Ray E. Levers, deceased, from October 1, 1941, until October 7, 1943, owned, controlled, and operated the "Smoke House Inc.," afterwards named the "Standard Liquor Stores Inc.," and through such ownership, control and operation, owned, controlled and operated all of the retail liquor stores owned or controlled or operated in the name of the said corporation during its lifetime.

525 2. Levers Brothers, Forest E. Levers and the Estate of Ray E. Levers, Deceased, owned, controlled and operated the retail liquor stores, owned, *controlled* and operated by the Standard Liquor Stores Inc., at the time of its dissolution, which are said to have been purchased by Oran C. Dale.

3. Levers Brothers, Forest E. Levers and the Estate of Ray E. Levers, Deceased, purchased the Central Bar at Tucumcari, New Mexico, from Mrs. James A. Dailey, and controlled and operated it in the name of the Standard Liquor Stores Inc., and also purchased the Yucca Bar at Carrizozo, New Mexico, from Mrs. London, in the name of

the Standard Liquor Stores Inc., and controlled and operated it in the name of said company.

4. Levers Brothers, Ray E. Levers and Forest E. Levers, well knew that on January 21, 1936, when applying for wholesaler's basic permit, pursuant to which wholesaler's basic permit No. P-8482 was issued by the Administrator of the Federal Alcohol Administration, that they owned, controlled and operated retail liquor stores through the Standard Liquor Stores Inc.

5. Levers Brothers, Forest E. Levers, individual, and the Estate of Ray E. Levers, Deceased, represented by Forest E. Levers and Oran C. Dale, Co-Administrators of the partnership assets of the Estate of Ray E. Levers, Deceased, well knew when application was made for wholesaler's basic permit, pursuant to which wholesaler's basic permit No. 13-P-37 was issued under the Federal Alcohol Administration Act, that they owned, controlled and operated retail liquor stores by virtue of their ownership, control and operation of Standard Liquor Stores Inc., and that by virtue of their interest in said stores were interested in the property in which they were operated and the state and city liquor licenses under which they were operated. They further knew at this time that through such operation, Levers Brothers were then and had for years previously controlled the buying power and insisted that purchases be practically all made from Levers Brothers, not only by the stores operated by the Standard Liquor Stores Inc., but also other stores that were obligated to Levers Brothers financially.

Levers Brothers represented by Forest E. Levers, individual, and Forest E. Levers, administrator of the partnership assets of the Estate of Ray E. Levers, Deceased, stated in his pending application for permits—for importer's basic permit and for wholesaler's basic permit—that Levers Brothers have no interest in any retail liquor stores, for the reason that Oran C. Dale has taken over all the liquor stores formerly owned, operated and controlled by Standard Liquor Stores Inc., at the time of its dissolution. There has been nothing presented in this hearing that shows that there was a valid sale of these stores to Oran C. Dale, and

if so, it must be remembered that Oran C. Dale, while acting as co-administrator with Forest E. Levers of the partnership assets of the Estate of Ray E. Levers, Deceased, for approximately two years, is shown to have from 92 to 96 shares of capital stock of Standard Liquor Stores Inc. In the absence of evidence as to a complete severance of relations between Oran C. Dale and the affairs of the Levers Brothers, I find that such sale is not a bona fide sale and that these properties are still under the ownership, control and operation of Levers Brothers. The report, Exhibit 155, of Investigator Hill as to the operation of Levers Brothers in this section of New Mexico during the past recent months shows conclusively that there has been no change in their method of operation, and while there is nothing in the record that shows who Oran C. Dale is or what his real connection with the Levers family is, it is of general knowledge that his wife is the daughter and only child of Ray E. Levers, Deceased.

6. I find that Levers Brothers in their application for wholesaler's basic permit misrepresented the facts in their reply to the inquiry,

"State whether applicant, either directly or indirectly, has actual or legal control over any other corporation, or is actually or legally controlled by any other corporation, whether such control is effected through stock ownership or in any other manner."

when they answered,

"Have no connection with any corporation, directly or indirectly." and thereby secured wholesaler's basic permit No. 13-P-37 by misrepresentation of material fact.

7. I find that Levers Brothers in their application for wholesaler's basic permit misrepresented the facts in their reply to the question,

"State whether applicant, or any of its officers, directors, principal stockholders, or any other person holding, or expected to hold, a substantial financial interest in the enterprise, holds any interest in any premises on which distilled spirits, wine, or malt beverages are sold at retail."

when they answered,

"Do not hold any interest in any retail outlets."

and thereby secured wholesaler's basic permit No. 13-P-37 through the misrepresentation of material fact.

8. I find that Levers Brothers, when they answered the above stated questions as they did, withheld material facts and thereby secured wholesaler's basic permit No. 13-P-37 by the concealment of material fact.

9. I find that the dissolution of Standard Liquor Stores, Inc., so far as the ownership, control and operation
528 of the retail liquor stores formerly owned, controlled and operated by the said Standard Liquor Stores Inc., has not insofar as shown by the record, transferred the ownership, control and operation of these said stores from Forest E. Levers and the Estate of Ray E. Levers, Deceased, represented by Forest E. Levers, special administrator of the partnership assets of the Estate of Ray E. Levers, Deceased, doing business as Levers Brothers.

THOS. P. FAHEY, Hearing Officer.

Order Annulling Permit Under Section 4 (e) (3) of the Federal Alcohol Administration Act of August 29, 1935, as amended (Section 204 (e), Title 27, U. S. C.)

530 United States of America, Judicial District of New Mexico. In the Matter of the Annulment of Permit No. 13-P-37, issued to Levers Brothers (Forest E. Levers and Oran C. Dale, dba) 209 East Second Street, Roswell, New Mexico. Docket No. EA-6, 13th Supervisory District, Alcohol Tax Unit. Internal Revenue Service.

To: Forest E. Levers, Co-Partner, Forest E. Levers, Special Administrator, and Oran C. Dale, Co-Administrator, 209 East Second Street, Roswell, New Mexico.

An order or citation having heretofore issued directing the above-named permittee to appear before Mr. Thos. P. Fahey and show cause why the above permit should not be annulled and such order having been served and a hearing held thereon as required by law and the said Thos. P. Fahey

having made the attached findings of fact, which findings are,—after due consideration, hereby approved by me, it is

Ordered, that Permit No. 13-P-37 issued to Levers Brothers (Forest E. Levers and Oran C. Dale, dba) be and the same hereby is annulled. The conclusions based on the findings of fact are

That there was misrepresentation in the application made for permit No. 13-P-37, Wholesaler's Basic Permit, by Forest E. Levers, Co-partner, Forest E. Levers, Special Administrator and Oran C. Dale, Co-administrator;

That the facts in the record of the hearing prove the charge in the citation on Form 1430 A, issued November 4, 1943;

That Permit No. 13-P-37 is subject to annulment under Section 4 (e) (3) of the Federal Alcohol Administration Act of August 20, 1935, as amended;

That there was concealment of material fact in the application and that the facts in the record of the hearing also prove the charge in the citation on Form 1430 A issued November 4, 1943, setting out this matter of concealment as one of the grounds rendering Basic Permit No. 13-P-37 subject to annulment.

The copy of the complete record of the hearing with copies of the exhibits were furnished you in care of your attorney, under date of February 15, 1944, by registered mail.

531 A copy is transmitted herewith of the Findings of Fact.

Dated this 5th day of April, 1944, at Denver, Colorado.

A. V. ANDERSON, District Supervisor.

I do hereby certify that on the 6 day of April, 1944, I served the foregoing order with enclosure on Levers Brothers, (Forest E. Levers and Oran C. Dale, dba) through their

attorney, Mr. James J. McNamara, Clovis, New Mexico, by registered mail to such attorney at Clovis, New Mexico.

Dated this 6 day of April, 1944.

ALTON SANDERSON, JR., Messenger.

Registered No. 225387.

P.T:JAH

April 5, 1944

Mr. Forest E. Levers, 209 E. Second Street, Roswell, New Mexico.

532 Dear Mr. Levers: There has been signed, this date, an Order annulling, under the provisions of Section 4 (c) (3), of the Federal Alcohol Administration Act of August 29, 1935, as amended, Basic Permit 13-P-37, issued to Levers Brothers (Forest E. Levers and Oran C. Dale, dba), 209 E. Second Street, Roswell, New Mexico.

The original Order, together with a copy of the Findings of Fact, are being sent this date, by registered mail, to your attorney, Mr. James J. McNamara, Clovis, New Mexico.

Prior to the hearing there were sent to you Regulations 3 (1942) of the U. S. Treasury Department, which set out procedures as far as applicable for hearings and appeals with respect to Annulment of Permits and Denials of Application. Some of the sections that are, in part, applicable are from Section 182.220 to 182.259. Section 182.255 specifies that, if there is a request to the District Supervisor for reconsideration, the application should be made within twenty days. This section specifies the grounds that the applicant must show in asking reconsideration. Sections 182.257 and 182.258 provide for other review, if the permittee, or applicant, has sufficient grounds and if the requests are made within the specified periods. The copy of Regulations 3 was sent to you at the time certain questions on procedure were submitted by you, at the request of your.

attorney, and it is thought that you sent the rulings to Mr. McNamara.

Very truly yours,

jm
cc—Mr. Jas. J. McNamara.

A. V. ANDERSON, District Supervisor.

United States of America. In the matter of the application for a Wholesaler's Basic Permit by Forest E. Levers, Co-Partner, Forest E. Levers, Special Administrator of Levers Brothers, dba: Levers Brothers. Docket No. FA-7, 13th Supervisory District. (Alcohol Tax Unit, Internal Revenue Service)

Order Denying Application
(under Federal Alcohol Administration Act)

To: Forest E. Levers, 209 East Second Street, Roswell, New Mexico.

533 A notice having heretofore issued informing the above-named applicant that the District Supervisor, Alcohol Tax Unit, 13th District, contemplated taking the action of denial of the application; such notice having been served; request for hearing made; and hearing held in connection with the matter relating to annulment of Permit 13-P-37 at Albuquerque, New Mexico, on January 19, 1944,—after due consideration of the Findings of Fact, rendered March 25th, 1944 by Mr. Thos. P. Fahey, Hearing Officer and of the entire data in the part of the record of the hearing devoted mainly to the applications and permits Nos. 13-P-66 and 13-I-12, in pages 204 to 217 and exhibits directly related thereto; also of the entire testimony given by Government witness, Mrs. James A. Daily and James Brister at pages 131-141 inclusive and 154 to 172 inclusive of the record, It Is Found

That the applicant is not entitled to the permit requested since the District Supervisor, Alcohol Tax Unit is of the opinion that the business proposed under Wholesaler's Basic Permit and Importer's Basic Permit, Nos. 13-P-66 and 13-I-12, would not be maintained in conformity with Federal laws and regulations, that the record of the hearing

supports the view expressed by the District Supervisor in the notice of January 5, 1944 (shown as Government Exhibit No. 15) relating to Docket Nos. FA-7 and FA-8, furnished on applicant's request as a statement of grounds, or particulars for denial of the permits:

Wherefore, It Is Ordered, that the application be denied for Wholesaler's Basic Permit under the Federal Alcohol Administration Act, as amended, to engage in the business of purchasing distilled spirits, wine and malt beverages for re-sale at wholesale.

Dated at Denver, Colorado, this 5th day of April, 1944

A. V. ANDERSON, District Supervisor.

I do hereby certify that on the 6 day of April, 1944, I served the foregoing notice by registered mail addressed to Clovis, New Mexico to Mr. James J. McNamara, attorney for the applicants.

Dated this 6 day of April, 1944.

ALTON SANDERSON, JR., Messenger.

Registered No. 225387.

AT:L:JAH

April 5, 1944

Forest E. Levers, Co-partner, Forest E. Levers, Special Administrator of Levers Brothers, dba, Levers Brothers, 209 East Second Street, Roswell, New Mexico.

534 Dear Mr. Levers: There is enclosed herewith a copy of application on Form 1632, executed November 29, 1943 with supporting statement prepared by you November 29, 1943 and also copy of Clerk's certificate of the same date signed by John C. Peck, Clerk of Probate Court, filed by you for Basic Permit to engage in the business of purchasing distilled spirits, wine and malt beverages for resale at wholesale, which has been disapproved for the reasons shown in detail in the order dated April 5, 1944, denying the application.

The above papers are being transmitted to you by registered mail with return receipt requested. A copy of this letter is also being sent by registered mail to your attorney.

with a copy of the Findings of Fact, relating to the record of the hearing of January 19, 1944 and original order covering annulment of Permit 13-P-37, and denial of 13-P-66 and 13-I-12.

Very truly yours,

Respectfully,
Enc.

A. V. ANDERSON, District Supervisor.

cc/ Mr. Jas. J. McNamara, Attorney at Law, Clovis, New Mexico (by registered mail)

United States of America. In the matter of the application for an Importer's Basic Permit by Forest E. Levers, Co-Partner, Forest E. Levers, Special Administrator of Levers Brothers, dba: Levers Brothers. Docket No. F.A.S. 13th Supervisory District. (Alcohol Tax Unit, Internal Revenue Service)

Order Denying Application
(under Federal Alcohol Administration Act)

To: Forest E. Levers, 209 East Second Street, Roswell, New Mexico.

535 A notice having heretofore issued informing the above-named applicant that the District Supervisor, Alcohol Tax Unit, 13th District, contemplated taking the action of denial of the application; such notice having been served; request for hearing made; and hearing held in connection with the matter relating to annulment of Permit 13-P-37 at Albuquerque, New Mexico, on January 19, 1944,—after due consideration of the Findings of Fact, rendered March 25th, 1944 by Mr. Thos. P. Fahey, Hearing Officer and of the entire data in the part of the record of the hearing devoted mainly to the applications and permits Nos. 13-P-66 and 13-I-12, in pages 204 to 217 and exhibits directly related thereto; also of the entire testimony given by Government witness, Mrs. James A. Daily and James Brister at pages 131-141 inclusive and 154 to 172 inclusive of the record. It Is Found

That the applicant is not entitled to the permit requested since the District Supervisor, Alcohol Tax Unit is of the opinion that the business proposed under Wholesaler's Basic

Permit and Importer's Basic Permit, Nos. 13-P-66 and 13-I-12, would not be maintained in conformity with Federal laws and regulations, that the record of the hearing supports the view expressed by the District Supervisor in the notice of January 5, 1944 (shown as Government Exhibit No. 15) relating to Docket Nos. FA-7 and FA-8, furnished on applicant's request as a statement of grounds, or particulars for denial of the permits.

Wherefore, It Is Ordered, that the application be denied for Importer's Basic Permit under the Federal Alcohol Administration Act, as amended, to engage in the business of importing into the United States, distilled spirits, wine and malt beverages.

Dated at Denver, Colorado, this 5th day of April, 1944.

A. V. ANDERSON, District Supervisor.

I do hereby certify that on the 6 day of April, 1944, I served the foregoing notice by registered mail addressed to Clovis, New Mexico to Mr. James J. McNamara, attorney for the applicants.

Dated this 6 day of April, 1944:

ALTON SANDERSON, JR., Messenger.

Registered No. 225387

ATTEST

April 5, 1944.

Forest E. Levers, Co-partner, Forest E. Levers, Special Administrator of Levers Brothers, dba, Levers Brothers, 209 East Second Street, Roswell, New Mexico.

666 Dear Mr. Levers: There is enclosed herewith a copy of application on Form 1630 executed November 29, 1943 with supporting statement prepared by you November 29, 1943, filed for a basic permit to engage in the business of importing into the United States distilled spirits, wine and malt beverages, which has been disapproved for the reasons shown on the order dated April 5, 1944, denying the application.

The above papers are being transmitted to you by registered mail with return receipt requested.

A copy of this letter is also being sent by registered mail to your attorney with the copy of the original order denying the application.

Very truly yours,

aye

A. V. ANDERSON, District Supervisor.

cc/ Mr. Jas. J. McNamara, Attorney at Law, Clovis, New Mexico (by registered mail)

AT:L:JAH

May 8, 1944

Mr. Forest E. Levers, 209 E. Second Street, Roswell, New Mexico.

539 Dear Mr. Levers: Notification is hereby given that the Order Annulling Basic Permit 13-P-37, dated April 5, 1944, is now final. You did not request reconsideration within the period allowed by the regulations. Therefore, activities under the permit must be terminated and final reports rendered as early as possible.

The business of purchasing intoxicating liquors for resale at wholesale must cease. However, this letter may be considered an authority to you to have a reasonable period of time in which to dispose of the liquor stock on hand that was covered by Permit 13-P-37.

Very truly yours,

ave

A. V. ANDERSON, District Supervisor.

Registered No. 225409.

cc/ District Supervisor
2cc/ BA c/o Miss Oliver
cc/ Asst. Supervisor (Enf.)

AT L:JAH

May 12, 1944.

Mr. James J. McNamara, Attorney at Law, Clovis, New Mexico.

Dear Mr. McNamara:

In re. Letter notification of May 8, 1944 to your client,
Forest E. Levers.

541 Further reference is made to your telegram worded as follows:

"KJA 606 NL Clovis New Mexico 11

Denver, May 11, 1944,
7 31 PM.

A. V. Anderson District Supervisor Alcohol Tax Unit Internal Revenue Service Denver

Re Your Letter May Eighth to Forest E. Levers Roswell New Mexico Stop Federal Alcohol Administration Act Provides That He Shall Have Sixty Days In Which To Appeal Your Decision Of April Seventh To The United States Court Of Appeals Stop He Intends To Take Such Appeal Stop If He Secures A Reversal On Such Appeal It Can Be Of No Benefit To Him If You Can Destroy His Business By Enforcement Of Ruling In Your Letter Stop It Is Respectfully Insisted And Urged That No Such Ruling Can Or In Fairness Should Be Entered Or Enforced Until After The Court Of Appeals Acts Stop It Is Suggested That Your Action Is In Contempt Of Court Stop Please Advise Me Immediately Of Your Intentions In The Premises.

JAS. J. MCNAMARA.

It is the view of this office that the Order Annulling Basic Permit 13-P-37, dated April 5, 1944, is now final according to the provisions for disposition of the liquor stock on hand. However, a copy of this communication, which embodies your telegram, will be referred to the office of the Deputy Commissioner, Stewart Berkshire, Alcohol Tax Unit, Washington, D. C.

542 Prior to sending Mr. Forest E. Levers the letter notification of May 8, 1944, an inquiry was made of

the Deputy Commissioner as to whether a direct appeal had been made to his office.

You have referred to a provision in the Federal Alcohol Administration Act of August 29, 1935, prior to amendments in 1940 and later shown in the appendices to the pamphlet published as of January 1, 1941 by the Government Printing Office, Washington, D. C. In the recent actions relating to the Permit 13-P-37, the procedure in Regulations 3 (1942) of the Treasury Department, made applicable by Treasury Decision 5152 of June 3, 1942 were followed. Through your client, you were supplied with T.D. 5152 and also with Regulations 3. An additional copy of the Treasury Decision is enclosed for your reference.

It is the view of this office that the Courts uphold the procedure, which requires request for administrative reconsideration prior to appeal to the Courts. In a decision, *Peoria Braumeister Co. v. Yellowley* CCA-7 November 24, 1941, it was held that the Internal Revenue Procedure was proper. This office cannot advise at this time whether the case is reported in Federal Reporter. It was printed at page 2603 Liquor Control Law Service of the Commercial Clearing House, Inc., one branch office, 205 West Monroe Street, Chicago, Illinois, Report No. 412, December 23, 1941. A summary from the case is as follows:

“Revocation: Suspension.—In a petition to set aside an order of the District Supervisor of the Alcohol Tax Unit, which suspended the basic permit of the petitioner to engage in the sale and distribution of intoxicating liquor in interstate commerce, it was charged by the petitioner that it was denied a fair hearing and procedural due process in that there was no compliance with certain requirements of Federal Alcohol Administration Regulations No. 1. The court held that while the proceedings to suspend the basic permit were instituted during a time when Regulations 1 were in effect, such regulations were superseded by others promulgated by T. D. 4982 and of which petitioner had constructive notice, and that the hearing conducted with such latter regulations was fair and proper.—*Peoria Braumeister Co. v. Yellowley*, CCA-7, November 24, 1941.”

Other references are:

• Leebern v. United States, U. S. Circuit Court of Appeals, Fifth Circuit, December 30, 1941.

• Administrative remedies must be had before an appeal to the courts in cases under the Federal Alcohol Administration Act. The regulations are intended to furnish a just, fair and adequate administrative procedure which will preserve the rights of the permittee against arbitrary and unlawful action with the minimum of resort to Court review. Supporting authority on analogous procedures:

543 Red River Valley vs. Federal Comm., 98 F. (2d) 282;

Goldsmith v. Board of Tax Appeals, 270 U. S. 119;

Mallory v. National Bituminous Coal Comm., 99 F. (2d) 399, and

Peoria v. Edwards C. Yellowly, F. (2d) Nov. 24, 1941."

• Middleboro Liquor & Wine Co., Inc. v. Berkshire, U. S. Court of Appeals for the District of Columbia, December 28, 1942.

Annulment procedure. There is no limitation in Section 4 (i) of the Federal Alcohol Administration Act. The limitations in the Act are specifically confined to proceedings for suspension or revocation and have no relation to annulment proceedings (see page 2592, Liquor Control Law Service, Report 459 January 11, 1943)."

Very truly yours,

A. V. ANDERSON, District Supervisor.

ave Encl.

cc/ Deputy Commissioner

District Supervisor

Bonded accounts

Asst. Supervisor, Enforcement.

Jas. J. McNamara
Lawyer
Clovis, New Mexico

May 15, 1944.

Mr. A. V. Anderson, District Supervisor, Alcohol Tax Unit,
Internal Revenue Service, Denver 2, Colorado.

Re: In the Matter of the Appeal of Forest E. Levers,
Administrator.

544 Dear Mr. Anderson: Enclosed please find copy of
Petition of Forest E. Levers for appeal and copy of
his Designation of Record for printing on appeal. Please
include the items, designated as 22, 23, 24 and 25 in the
Designation, in the Record when you send it to the Court.

Very truly yours,

JAS. J. McNAMARA.

P.S. I have your wire stating that you were writing me,
but have never received the letter.

Jas. J. McNamara
Lawyer
Clovis, New Mexico

May 17, 1944.

Mr. A. V. Anderson, District Supervisor, Alcohol Tax Unit,
Denver 2, Colorado.

547 Dear Mr. Anderson: Thanks for your May 12th
letter. It didn't reach me until yesterday morning,
May 16th. In the meantime I had prepared and mailed for
filing a petition for appeal to the U. S. Circuit Court of
Appeals and sent a copy to you.

I am indebted to you and Miss Hatch for your many cour-
tesies. Of course, I have no responsibility for the outcome
of these matters but I am responsible for the correct con-
duct of the proceedings and I am anxious not to make any
mistakes in procedure in this field which is entirely new
to me.

As I understand the Regulations, they appear designed to decentralize the control lodged in Washington and place it in the hands of the District Supervisors. In fact, the regulations state that appeal to the Commissioner is not required, and if such an appeal should be filed, it is discretionary with the Commissioner whether or not he will entertain it. However, if such an appeal is necessary, I want to take it. No application for reconsideration was made because I had laid Levers' side of the matter before the Hearing Officer and the District Supervisor as fully and fairly as I knew how. I am sure that the contentions advanced on behalf of Levers received full and fair consideration. Accordingly, there was nothing new or additional I could lay before the Supervisor, nor anything new or additional that I could ask him to do. The only thing left for me to do was to appeal.

I will appreciate your advices in the premises when you hear from Washington.

Very truly yours,

JAS. J. McNAMARA.

In the United States Circuit Court of Appeals for the Tenth Circuit. In the Matter of the Appeal of Forest E. Levers, Administrator. No. 2939.

Certificate of A. V. Anderson, District Supervisor, Alcohol Tax Unit, Treasury Department, Denver, Colorado.

Whereas the functions of administering the provisions of the Federal Alcohol Administration Act of August 29, 1935 (49 Stat. 977), as amended by Acts of February 29, 1936, and June 26, 1936 (49 Stat. 1152, 1964), including the power and duty to issue basic permits or to deny applications for such permits and to annul such permits were vested in the Administrator of the Federal Alcohol Administration;

And Whereas, by the Reorganization Act of 1939, the Reorganization Plan No. III (H. R. Doc. No. 681, 76th Cong., 3rd Sess.) prepared by the President and transmitted by him to Congress on April 2, 1940, and the Joint Resolution of June 4, 1940 (Pub. Res. No. 75, 76th Cong., 3rd Sess.), it was provided that:

"The Federal Alcohol Administration, the offices of the members thereof, and the office of the Administrator are abolished, and their functions shall be administered under the direction and supervision of the Secretary of the Treasury through the Bureau of Internal Revenue in the Department of the Treasury";

And Whereas, by Treasury Order No. 30 of the Secretary of the Treasury (Code of Federal Regulations, Title 26, Part 171, Subpart B, Section 171.4a; 5 Fed. Reg. 2212), the aforesaid functions of the aforesaid former Administration and of its members and Administrator were delegated to the Deputy Commissioner of Internal Revenue in Charge of the Alcohol Tax Unit, Treasury Department;

And Whereas, by the Code of Federal Regulations, Title 26, Part 171, Subpart B-1, Section 171.4c; T. D. 4982; 5 Fed. Reg. 2549, the power and duty to annul basic permits and to grant and to deny applications for such permits, under the provisions of the Federal Alcohol Administration Act theretofore vested in the aforesaid Deputy Commissioner by the aforesaid Treasury Order No. 30 were also delegated to the District Supervisors of of the Alcohol Tax Unit, to be exercised by them, subject to the supervision and direction of the aforesaid Deputy Commissioner;

And Whereas, in administrative proceeding No. FA-6, my order dated April 5, 1944, annulled Wholesaler's Basic Permit No. 13-P-37, previously issued under date of December 26, 1941; to "Levers Brothers (Forest E. Levers and Oran C. Dale, dba)" under the Federal Alcohol Administration Act; and in administrative proceeding No. FA-7, my order dated April 5, 1944, denied the application filed with me on December 1, 1943, of "Forest E. Levers, Co-partner; Forest E. Levers, Special Administrator of Levers Brothers, d.b.a. Levers Brothers", for a Wholesaler's Basic Permit under said Act; and, in administrative proceeding No. FA-8, my order dated April 5, 1944, denied the application filed with me on December 1, 1943, of "Forest E. Levers, Co-Partner; Forest E. Levers, Special Administrator of Levers Brothers, d.b.a., Levers Brothers", for an Importer's Basic permit under said Act;

And Whereas, under the provisions of Regulations 3, Bureau of Internal Revenue (Code of Federal Regulations, Subchapter C, Part 182, Section 182.255; 7 Fed. Reg. 1889-90), and regulation, T. D. 5152 (Code of Federal Regulations, Title 26, Part 171, Subpart B-1, Section 171.4d; 7 Fed. Reg. 4267), the Petitioner could have applied to me for reconsideration of my aforesaid orders, but did not so apply at any time and on May 18, 1944, filed in this cause his petition, or appeal from my aforesaid orders;

Now, Therefore, I, A. V. Anderson, District Supervisor, Alcohol Tax Unit, Denver, Colorado, Do Hereby Certify that the documents annexed hereunto and filed herewith in this Court are the identical documents constituting the complete administrative transcript of record in the said three administrative proceedings, which were consolidated for joint hearing, and in which my aforesaid three orders of April 5, 1944, were entered, and that the aforesaid identical documents annexed hereunto and filed herewith in this Court are assembled into one volume, consisting of pages 1, 1a, 2 to 279, 279a, 280 to 283, 283a, 283b, and 284 to 547, being the stenographic report of the administrative joint hearings, the exhibits, and other documents, viz:

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 1, 1-a, and 2 to 217, Original transcript of the joint hearings in administrative proceedings Nos. FA-6, FA-7 and FA-8, held at Albuquerque, New Mexico, on January 19, 20 and 21, 1944, before Thomas P. Fahey, Hearing Officer;

In said FA-6:

- 218-219, Ex. 1, Signed carbon copy of citation dated November 4, 1943, for the annulment of said Wholesaler's Basic Permit No. 13-P-37, with proof of service thereof;
- 220, Ex. 2, Both sides of original registered mail return-receipt card indicating that Levers Bros. on November 8, 1943, received the original of the just-mentioned citation;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 221, My original designation dated November 4, 1943, of said Fahey as Hearing Officer;
- 222, Ex. 3, Carbon copy of my letter dated November 27, 1943, to Levers Brothers, continuing the hearing to January 19, 1944.
- 223, Ex. 4, Both sides of original registered mail return-receipt card indicating that Levers Bros., F. E. Levers, on November 30, 1943, received the original of the just-mentioned letter;
- 224-225, Ex. 17, Carbon copy of subpoena issued Dec. 18, 1943, to Ernest Bridges, with original Return of Service on reverse;
- 226-227, Ex. 20, Carbon copy of subpoena issued Dec. 18, 1943, to H. C. Garrison, with original Return of Service on reverse;
- 228-229, Ex. 21, Carbon copy of subpoena issued Dec. 18, 1943, to P. V. Hart, with original Return of Service on reverse;
- 230-231, Ex. 22, Carbon copy of subpoena issued Dec. 18, 1943, to J. Clifton Hearn, with original Return of Service on reverse;
- 232-233, Ex. 24, Carbon copy of subpoena issued Dec. 18, 1943, to W. E. McLaughlin, Jr., with original Return of Service on reverse;
- 234-235, Ex. 25, Carbon copy of subpoena issued Dec. 18, 1943, to Dock Clyde Roberts, with original Return of Service on reverse;
- 236-237, Ex. 26, Carbon copy of subpoena issued Dec. 18, 1943, to Wm. J. Wilson, with original Return of Service on reverse;
- 238-239, Ex. 27, Carbon copy of subpoena issued Dec. 18, 1943, to Alfred C. Wright, with original Return of Service on reverse;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 240-241, Ex. 18, Carbon copy of subpoena issued Dec. 24, 1943, to W. P. Clark, with original Return of Service on reverse;
- 242-243, Ex. 19, Carbon copy of subpoena issued Dec. 24, 1943, to Mrs. James A. Daily, with original Return of Service on reverse;
- 244-245, Ex. 23, Carbon copy of subpoena issued Dec. 24, 1943, to Samuel L. Mangham, with original Return of Service on reverse;
- 246-248, Ex. 28, Carbon copy of subpoena duces tecum issued Dec. 24, 1943, to James Brister, with original Return of Service on reverse;
- 249-251, Ex. 29, Carbon copy of subpoena duces tecum issued Dec. 24, 1943, to Cosme P. Garcia, with original Return of Service on reverse;

In said FA-7:-

- 252-253, Ex. 42, Original signed carbon copy of application of "Forest E. Levers, Co-Partner; Forest E. Levers, Special Administrator of Levers Brothers, d.b.a. Levers Brothers" for Wholesaler's Basic Permit, subscribed and sworn to Nov. 29, 1943, and marked Received Dec. 1, 1943;
- 254-257, Ex. 43, Verified carbon copy of sworn statement supporting last mentioned application, marked Received Dec. 1, 1943;
- 258-259, Ex. 44, Verified certified copy of Order of Court in the matter of the Estate of Ray E. Levers, deceased, accompanying last mentioned application, marked Received Dec. 1, 1943;
- 260-261, Ex. 5, Carbon copy of my Notice of Contemplated Denial dated Dec. 18, 1943, of the last mentioned application, addressed to Petitioner;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

262, Ex. 6, Both sides of original registered mail return receipt card indicating Forest E. Levers received the original of the just mentioned Notice;

263, Ex. 9, Carbon copy of my letter dated Jan. 1, 1944, to said Levers notifying him that hearing in the matter of the last mentioned application would be consolidated with the hearing in said FA-6, to be held January 19, 1944:

264, Ex. 10, Both sides of original registered mail return receipt card indicating that F. E. Levers on Jan. 5, 1944, received the original of the last mentioned letter;

265, Ex. 13, Original letter dated Jan. 1, 1944, from said Levers to me making application for hearing and requesting a statement of grounds of the contemplated denial of the last mentioned application:

In said FA-8:

266-267, Ex. 45, Original carbon copy of application of "Forest E. Levers, Co-partner; Forest E. Levers, Special Administrator of Levers Brothers, d.b.a. Levers Brothers" for Importer's Basic Permit, subscribed and sworn to Nov. 29, 1943, and marked Received Dec. 1, 1943;

268-272, Ex. 46, Verified carbon copy of sworn statement supporting last mentioned application, marked Received Dec. 1, 1943.

273-274, Ex. 7, Carbon copy of my Notice of Contemplated Denial dated Dec. 18, 1943, of the last mentioned application, addressed to Petitioner;

275, Ex. 8, Both sides of registered mail return receipt card indicating that Forest E. Levers received the original of the last mentioned Notice;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 276, Ex. 11, Carbon copy of my letter dated Jan. 1, 1944, to said Levers notifying him that hearing in the matter of the last mentioned application would be consolidated with the hearing in said FA-6, to be held January 19, 1944;
- 277, Ex. 12, Both sides of registered mail return receipt card indicating that F. E. Levers on Jan. 5, 1944, received the original of the last mentioned letter;
- 278, Ex. 14, Original letter dated Jan. 1, 1944, from said Levers to me making application for hearing and requesting statement of grounds of the contemplated denial of the last mentioned application;

In said FA-6, FA-7 and FA-8:

- 279, My original designation dated Jan. 1, 1944, of said Fahey as Hearing Officer in the two application proceedings, said FA-8 and FA-7, with authority to him to consolidate the hearings in same with the hearing in the annulment proceeding, FA-6;
- 279-a, Letter dated January 1, 1944, from said Levers to me relative to his engaging James J. McNamara as his attorney;
- 280-281, Ex. 15, Carbon copy of my letter dated Jan. 5, 1944, to said Levers giving more details of grounds for contemplated denials of applications for Wholesaler's and Importer's Basic Permits, and notifying that the hearings in these two application matters would be consolidated with the hearing in the annulment matter, to be held Jan. 19, 1944;
- 282, Ex. 16, Both sides of original registered mail return-receipt card indicating that F. E. Levers on Jan. 8, 1944, received the original of the last mentioned letter;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

283-283a Copy of my letter dated Jan. 6, 1944, to said
Levers;

283b, Original letter dated Jan. 18, 1944, from James J. Mc-
Namara, attorney for Levers, to me;

284-285, Original stipulation signed by Josie A. Hatch, Act-
ing Legal Advisor, Alcohol Tax Unit, Denver,
Colo., and John N. Schooley, Special Investi-
gator, Alcohol Tax Unit, Denver, Colorado, and
said McNamara that the record in the three con-
solidated proceedings shall include the documents
specified therein;

286-287, Another original stipulation of the same date, be-
tween the same persons, that the record in the
three consolidated cases shall include the addi-
tional documents specified therein;

288-289, Another original stipulation undated, between the
same persons, that the record shall include the ad-
ditional documents specified therein;

290-291, Another original stipulation, of the same date, be-
tween the same persons, that the record shall in-
clude the additional documents specified therein;

292, Another original stipulation, undated, between the same
persons, that the record shall include the addi-
tional documents specified therein;

• Evidence in Said FA-6, FA-7 and FA-8;

293, Ex. 40, Verified copy of application of Ray E. Levers
and Forest E. Levers, d.b.a. Levers Brothers, a co-
partnership, subscribed and sworn to by the said
Forest E. Levers on Jan. 21, 1936;

294-295, Ex. 41, Verified copy of sworn statement support-
ing last mentioned application, subscribed and
sworn to by said Forest E. Levers on Jan. 21,
1936;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

296, Ex. 39, Verified copy of Wholesaler's Basic Permit No. P-8482, issued, pursuant to last mentioned application, to Ray E. Levers and Forest E. Levers, d.b.a. Levers Brothers, dated March 21, 1936;

297, Ex. 38, Verified copy of letter dated Oct. 20, 1941, from said Levers to me, advising that said Ray E. Levers was killed Oct. 1, 1941, and requesting necessary forms to make application for new basic permit;

298, Ex. 37, Verified copy of letter dated Oct. 28, 1941, from said Levers to me, enclosing application for new Wholesaler's Basic Permit;

299-300, Ex. 31, Verified copy of last mentioned application, subscribed and sworn to Oct. 28, 1941;

301-304, Ex. 32, Verified copy of statement supporting last mentioned application, subscribed and sworn to Oct. 28, 1941;

305, Ex. 33, Verified copy of Certificate of Clerk of Court dated Oct. 28, 1941, in respect to next mentioned three documents, in support of last mentioned application.

306-307, Ex. 34, Verified copy of order of the Court, dated Oct. 6, 1941, appointing F. E. Levers as "Special Administrator of the Estate of Ray E. Levers, deceased, insofar as the partnership assets in the firm of Levers Brothers is concerned;" etc.;

308-309, Ex. 35, Verified copy of order of Court dated Oct. 10, 1941, appointing Oran C. Dale "co-administrators with F. E. Levers to administer the partnership assets of the decedent, Ray E. Levers";

310, Ex. 36, Verified copy of Letters of Administration dated Oct. 15, 1941, to F. E. Levers and Oran C. Dale, as Co-administrators of the partnership assets of the said Ray E. Levers, deceased;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record.

- 311, Ex. 30, Verified copy of Wholesaler's Basic Permit No. 13-P-37 dated Dec. 26, 1941, issued pursuant to last mentioned application to "Levers Bros. (Forest E. Levers and Oran C. Dale, dba)";
- 312-319, Ex. 47, Verified copy of Articles of Incorporation of Smoke House, Inc., executed by Rowland E. Levers, J. Clifton Hearn, and Leland King March 29 and April 2, 1935, and filed in the office of the State Corporation Commission of New Mexico on April 6, 1935;
- 320-323, Ex. 48, Verified copy of Amendment to Certificate of Incorporation of Smoke House, Inc., executed by the said three persons Oct. 18, 1935, and filed with said Commission on Jan. 20, 1936;
- 324-325, Ex. 49, Verified copy of report of Standard Liquor Stores, Inc., filed July 19, 1941, with said Commission;
- 326-327, Ex. 50, Verified copy of report of Standard Liquors Stores, Inc., filed Aug. 15, 1942, with said Commission;
- 328, Ex. 51, Verified copy of Certificate of Dissolution of Standard Liquor Stores, Inc., issued Oct. 11, 1943, by said Commission;
- 329, Ex. 51-a, Copy of letter dated September 27, 1943, from Commissioner of Revenue, New Mexico, to said Commission;
- 330, Ex. 51-b, Copy of letter dated Sept. 2, 1943, from said Commission to its Corporation Department;
- 331, Ex. 51-c, Copy of letter dated Sept. 2, 1943, to said Commission from Income Tax Division, Bureau of Revenue, N. M.;
- 332, Ex. 51-d, Copy of Certificate of Dissolution of Standard Liquor Stores, Inc., and Consent in Writing of all Stockholders, dated Sept. 25, 1943;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 333. Ex. 51-e. Copy of Certificate as to the names and addresses of the directors and officials of Standard Liquor Stores, Inc.:
- 334. Ex. 51-f. Copy of Affidavit as to Payment of Taxes levied upon or assessed against Standard Liquor Stores, Inc., subscribed and sworn to Sept. 25, 1943:
- 335-336. Ex. 51-g. Copy of affidavit, Aug. 26, 1943, in respect to copy of resolution approving sale of assets of Standard Liquor Stores, Inc., to Oran C. Dale on June 30, 1943, and covering sheet showing Certificate of Dissolution of Standard Liquor Stores, Inc., was filed with said Commission on Oct. 7, 1943:
- 337. Ex. 52. Photostat of Certificate of County Clerk of Lea County, N. M., subscribed and sworn to Sept. 22, 1942, in re certain entries covering Lots 6 and 7, Block 4, South Eunice Addition to the town of Eunice:
- 338. Ex. 53. Photostat of Certificate of last mentioned Clerk, subscribed and sworn to September 1, 1942, in respect to certain instruments covering Lot 11, Block 35, Original Town of Hobbs, N. M.:
- 339. Ex. 54. Verified photostat of Public Roster, 1935, 1936 and 1937, concerning Rolland E. Levers:
- 340. Ex. 55. Verified photostat of Public Roster, 1941, 1942 and 1943, concerning R. E. Levers:
- 341. Ex. 56. Copy of Special Tax return of Standard Liquor Stores, Inc., d.b.a. Smoke House, subscribed and sworn July 25, 1941:
- 341. Ex. 57. Special Tax return of Smoke House-Standard Liquor Stores, Inc., subscribed and sworn July 29, 1940:

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 342, Ex. 58, Special Tax return of Clyde Roberts, Green Lantern, subscribed and sworn Dec. 8, 1941;
- 342, Ex. 59, Copy of Special Tax return of Standard Liquor Stores, Inc., d.b.a. Green Lantern Bar, subscribed and sworn to July 25, 1941;
- 343, Ex. 60, Copy of Special Tax return of Standard Liquor Stores, Inc., Green Lantern, subscribed and sworn July 29, 1940;
- 343, Ex. 61, Copy of Special Tax return of The Standard Liquor Stores, Inc., d.b.a. The Cantina Bar, subscribed and sworn to Sept. 30, 1940;
- 344, Ex. 62, Copy of Special Tax return of Standard Liquor Stores, Inc. d.b.a. Cantina Bar, subscribed and sworn July 25, 1941;
- 344, Ex. 63, Copy of Special Tax return of Standard Liquor Stores, Inc., Heidelberg Inn, subscribed and sworn July 20, 1940;
- 345, Ex. 64, Copy of Special Tax return of Standard Liquor Stores, Inc., d.b.a. Heidelberg Inn, subscribed and sworn July 26, 1941;
- 345, Ex. 65, Copy of Special Tax return Standard Liquor Stores, Inc., Hollywood Club, subscribed and sworn July 29, 1940;
- 346, Ex. 66, Copy of Special Tax return of Standard Liquor Stores, Inc., d.b.a. Hollywood Club, subscribed and sworn July 26, 1941;
- 346, Ex. 67, Copy of Special Tax return of James A. Daily, Central Bar, subscribed and sworn June 7, 1940;
- 347, Ex. 68, Copy of Special Tax return of Central Bar, subscribed and sworn June 23, 1941;
- 347, Ex. 69, Copy of Special Tax return of Irma Todd, Yucca Bar, subscribed and sworn Dec. 3, 1941;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 348, Ex. 70, Copy of Special Tax return of Gladys Loudon, Yucca Cocktail Bar, subscribed and sworn July 16, 1940;
- 348, Ex. 71, Copy of invoice 0181 of Levers Brothers;
- 349, Ex. 72, Photostat of Tax Receipt of Lea County, N. M., to Forest E. Levers for taxes levied in 1935;
- 350, Ex. 73, Photostat of contract executed April 4, 1938, between Standard Liquor Stores, Inc., and H. A. Stokes;
- 351, Ex. 74, Photostat of On Demand note, dated Feb. 23, 1937, for \$1885.43 signed by Standard Liquor Stores, Inc., payable to the order of Levers Brothers;
- 352, Ex. 75, Photostat of Credit Memorandum from Levers Bros. to S.L.S. Inc., for \$1885.43;
- 353, Ex. 76, Photostat of both sides of note dated Jan. 25, 1937, for \$10,000 payable six months after date, to the order of The First National Bank of Roswell, signed by Standard Liquor Stores, Inc., and endorsed by R. E. Levers, guaranteeing payment;
- 354, Ex. 77, Photostat of both sides of note dated Jan. 25, 1937, for \$4500 payable four months after date, to the order of The First National Bank of Roswell, signed by Standard Liquor Stores, Inc., and endorsed by R. E. Levers, *guaranting* payment; marked Paid May 25, 1937;
- 355, Ex. 78, Photostat of unsigned copy of letter dated Aug. 9, 1939, addressed to Frank Kirk;
- 356, Ex. 79, Photostat of unsigned copy of letter dated Jan. 19, 1937, from Standard Liquor Stores, Inc., to Worth Bar;
- 357, Ex. 80, Photostat of unsigned copy of letter dated April 14, 1937, addressed to Worth Bar;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 358, Ex. 81, Photostat of unsigned memorandum, re license on SLS Bar in the name of Standard Liquor Stores;
- 359, Ex. 82, Photostat of unsigned copy of letter dated April 8, 1938, from Standard Liquor Stores, Inc. to Elson & Company;
- 360, Ex. 83, Photostat of unsigned copy of letter dated April 8, 1938, from Standard Liquor Stores, Inc. to Ilfeld & Company;
- 361, Ex. 84, Photostat of unsigned copy of letter dated Feb. 28, 1938, addressed to Rolland E. Levers;
- 362, Ex. 85, Photostat of unsigned copy of letter dated Oct. 24, 1935, from Standard Liquor Stores, Inc., to National Cash Register Co.;
- 363-365, Ex. 86, Photostat of unsigned letter dated Nov. 21, 1939, addressed to Ernest Bridges;
- 366, Ex. 87, Photostat of unsigned copy of letter dated June 20, 1937, to R. E. L. Harris, Hollywood Club;
- 367, Ex. 88, Photostat of record of purchases of distilled spirits by Tokio Nite Club from Levers Bros. as shown on 52-B records in office of District Supervisor;
- 368, Ex. 89, Photostat of record of purchases of distilled spirits by S.L.S. Bar from Levers Bros. as shown on 52-B records in office of District Supervisor;
- 369, Ex. 90, Photostat of record of purchases of distilled spirits by Standard Bar from Levers Bros. as shown on 52-B records in office of District Supervisor;
- 370, Ex. 91, Photostat of record of purchases of distilled spirits by Crystal Bar from Levers Bros. as shown on 52-B records in office of District Supervisor;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 371, Ex. 92, Photostat of record of purchases of distilled spirits by Worth Bar from Levers Bros. as shown on 52-B records in office of District Supervisor;
- 372, Ex. 93, Photostat of copy of Operating Statement of Liquor Stores Inc., d.b.a. Central Bar, for 19 days in Dec. 1941;
- 373, Ex. 94, Photostat of copy of Operating Statement of Liquor Stores, Inc., d.b.a. Central Bar for month of Feb. 1942;
- 374, Ex. 95, Photostat of copy of Operating Statement of Liquor Stores, Inc., d.b.a. Central Bar for month of March, 1942;
- 375, Ex. 96, Photostat of copy of Operating Statement of Liquor Stores, Inc., d.b.a. Central Bar for month of April, 1942;
- 376, Ex. 97, Photostat of Certificate as to the Payment of Capital Stock of Smoke House, Inc.;
- 377-382, Ex. 98, Photostat of Organization of Smoke House, Inc.;
- 383, Ex. 99, Photostat of regular meeting of Board of Directors of Smoke House, Inc., held April 9 (no year stated);
- 384, Ex. 100, Photostat of regular meeting of Board of Directors of Smoke House, Inc., held July 9, 1935;
- 385-386, Ex. 101, Photostat of Minutes of Stockholders' Special Meeting of Smoke House, Inc., held in Sept. 1935;
- 387, Ex. 102, Photostat of Assent of Stockholders of Smoke House, Inc., to change in name of such corporation to Standard Liquor Stores Inc., executed Oct. 8, 1935;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

388, Ex. 103, Copy of regular meeting of Board of Directors of Standard Liquor Stores, Inc., held Oct. 9, 1935;

389-390, Ex. 104, Photostat of Minutes of Directors' Special Meeting of Smoke House, Inc., on Oct. 11, 1935;

391, Ex. 105, Photostat of Special Meeting of Board of Directors of Standard Liquor Stores, Inc., held Feb. 9, 1936;

392, Ex. 106, Photostat of Special Meeting of Directors of Standard Liquor Stores, Inc., held June 9 (year not stated);

393, Ex. 107, Photostat of regular quarterly meeting of Board of Directors of Standard Liquor Stores, Inc., held March 9, 1937;

394, Ex. 108, Photostat of Special Meeting of Board of Directors of Standard Liquor Stores, Inc., held Jan. 20, 1938;

395, Ex. 109, Photostat of Minutes of Special Meeting of Stockholders of Standard Liquor Stores, Inc., held Jan. 20, 1938;

396-397, Ex. 110, Photostat of Special Meeting of Board of Directors of Standard Liquor Stores, Inc., held Dec. 26, 1938;

398, Ex. 111, Photostat of Annual Meeting of Board of Directors of Standard Liquor Stores, Inc., held July 9, 1940;

399, Ex. 112, Photostat of Minutes of Annual Meeting of Stockholders of Standard Liquor Stores, Inc., held July 9, 1940;

400, Ex. 113, Photostat of Annual Meeting of Board of Directors of Standard Liquor Stores, Inc., held July 8, 1941;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 401, Ex. 114, Photostat of Minutes of Annual Meeting of Stockholders of Standard Liquor Stores, Inc., held July 8, 1941;
- 402, Ex. 115, Photostat of record of purchases of distilled spirits by Smoke House from Levers Bros., as shown on 52-B records in office of District Supervisor;
- 403, Ex. 116, Photostat of record of purchases of distilled spirits by Green Lantern from Levers Bros., as shown on 52-B records in office of District Supervisor;
- 404, Ex. 117, Photostat of record of purchases of distilled spirits by Heidelberg Inn from Levers Bros., as shown on 52-B records in office of District Supervisor;
- 405, Ex. 118, Photostat of record of purchases of distilled spirits by Standard Bar from Levers Bros., as shown on 52-B records in office of District Supervisor;
- 406, Ex. 119, Photostat of record of purchases of distilled spirits by Collins Bar from Levers Bros., as shown on 52-B records in office of District Supervisor;
- 407, Ex. 120, Photostat of record of purchases of distilled spirits by Cantina Bar from Levers Bros., as shown on 52-B records in office of District Supervisor;
- 408, Ex. 121, Photostat of record of purchases of distilled spirits by Yucca Bar from Levers Bros., as shown on 52-B records in office of District Supervisor;
- 409, Ex. 122, Photostat of record of purchases of distilled spirits by Central Bar from Levers Bros., as shown on 52-B records in office of District Supervisor;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

410-411, Ex. 123, Photostat of record of purchases of distilled spirits by Hollywood Club from Levers Bros., as shown on 52-B records in office of District Supervisor:

412, Ex. 124, Photostat of record of purchases of distilled spirits by City Bar or Dexter Bar from Levers Bros., as shown on 52-B records in office of District Supervisor:

413, Ex. 125, Photostat of Assignment from E. M. Gregory to Standard Liquor Stores, Inc., acknowledged May 28, 1942:

414, Ex. 126, Assignment from Standard Liquor Stores, Inc., to Lamac Store Fixture Company, executed June 6, 1939:

415, Ex. 127, Photostat of Demand Note dated June 6, 1939, for \$5000 to the order of Lamac Store Fixtures Company, signed by Standard Liquor Stores, Inc.;

416-417, Ex. 128, Photostat of Demand Note dated March 20, 1941, for \$1745 15 payable to the order of Levers Bros., signed by Elsie Conner Daily, and chattel mortgage, acknowledged by her March 21, 1941, securing said note:

418-421, Ex. 129, Photostat of complaint of Standard Liquor Stores, Inc. vs. James Daily and Elsie Daily, DBA Central Bar, in the 9th Judicial District Court, Quay County, N. M., subscribed and sworn Dec. 9, 1941;

422, Ex. 130, Photostat of Answer of James Daily and Elsie Daily to last mentioned complaint, sworn to by her Dec. 9, 1941;

423-424, Ex. 131, Photostat of Stipulation for Judgment dated Dec. 10, 1941, in last mentioned litigation, sworn to Dec. 10, 1941;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 425, Ex. 132, Photostat of Bill of Sale from James Daily and Elsie Daily to Standard Liquor Stores, Inc., executed Dec. 9, 1941;
- 426, Ex. 133, Photostat of Assignment from James Daily and Elsie Daily executed Dec. 9, 1941;
- 427-427a, Ex. 134, Photostat of Chattel Mortgage from Alfred C. Wright to Standard Liquor Stores, Inc., filed Aug. 20, 1938;
- 428-429, Ex. 135, Photostat of Release of Chattel Mortgage from Levers Brothers to Gladys Loudon, executed March 13, 1941, and filed for record June 20, 1941;
- 430-431, Ex. 136, Photostat of Bill of Sale and Assignment of Lease from Gladys Loudon to Standard Liquor Stores, Inc., executed June 19, 1941;
- 432, Ex. 137, Photostat of letter dated July 9, 1941, to Forest E. Levers from James Brister;
- 433, Ex. 138, Photostat of record of purchases by Yucca Bar from Levers Bros. in 1941;
- 434, Ex. 139, Photostat of letter dated July 26, 1941, from Forest E. Levers to James Brister;
- 435, Ex. 140, Photostat of both sides of Paid check dated Nov. 24, 1941, signed (Yucca Bar) James Brister, for \$150 payable to and endorsed by said Brister;
- 436, Ex. 141, Photostat of sheet from 1937 ledger of Levers Brothers showing Notes Receivable in 1937;
- 437, Ex. 142, Photostat of sheet of columnar Journal Cash Book of Levers Brothers for June and July, 1938;
- 438, Ex. 143, Photostat of sheet from the 1936 ledger of Levers Brothers showing Notes Payable;
- 439, Ex. 144, Photostat of ledger sheet of Levers Brothers for November and December, 1937, showing Notes Payable;

Pages of the hereby
certified administrative
transcript of the ad-
ministrative record:

- 440, Ex. 145, Photostat of ledger sheet of Levers Brothers for January, February and December, 1937, showing Hobbs Real Estate;
- 441, Ex. 146, Photostat of ledger sheet of Levers Brothers for June, 1938, showing Hobbs Real Estate;
- 442, Ex. 147, Photostat of ledger sheet of Levers Brothers for 1936, showing Interest on "Notes Payable, Notes Rec.";
- 443, Ex. 148, Photostat of ledger sheet of Levers Brothers for 1937 showing Interest on Notes Payable and Receivable;
- 444, Ex. 149, Photostat of ledger sheet of Levers Brothers for 1936 re Rent account Palace Bar;
- 445, Ex. 150, Photostat of ledger sheet of Levers Brothers for 1936, showing Hobbs Real Estate;
- 446, Ex. 151, Photostat of ledger sheet of Levers Brothers for 1936 showing Standard Liquor Stores, Inc.;
- 447, Ex. 152, Photostat of ledger sheet of Levers Brothers for 1936 showing Real Estate (Eunice);
- 448, Ex. 153, Photostat of ledger sheet of Levers Brothers for 1937 re Mr. and Mrs. Manual, lot 6, Eunice;
- 449-450, Ex. 154, Verified copy of affidavit of Forest E. Levers, subscribed and sworn Dec. 17, 1934;
- 451-456, Ex. 155, Original report dated Jan. 7, 1944, signed by W. L. Hill, Investigator, Alcohol Tax Unit;
- 457-458, Ex. 156, Original letter dated December 1, 1943, from Acting Chief, Miscellaneous Tax Division, U. S. Internal Revenue Service, to me;
- 459, Ex. 157, Copy of Special-Tax return of Standard Liquor Stores, d.b.a. Cantina Bar, subscribed and sworn July 20, 1943;

Pages of the herby
certified administrative
transcript of the ad-
ministrative record:

459, Ex. 158, Copy of Special-Tax return of Standard Stores, d.b.a. Central Bar, subscribed and sworn July 20, 1943;

460, Ex. 159, Copy of Special-tax return of Standard Stores, d.b.a. Dexter Bar, subscribed and sworn July 20, 1943;

460, Ex. 160, Copy of Special-Tax return of Standard Stores, d.b.a. Heidelberg Inn, subscribed and sworn July 20, 1943;

461, Ex. 161, Copy of Special Tax return of Standard Stores, d.b.a. Hollywood Club, subscribed and sworn July 20, 1943;

461, Ex. 162, Copy of Special-Tax return of Standard Stores, d.b.a. Snake House, subscribed and sworn July 20, 1943;

Documents Subsequent To Said Hearings

462-477, Original "Brief and Argument of Forest E. Levers", signed by his attorney James J. McNamara, marked Received March 1, 1944;

478-529; Original "Findings of Fact" signed by Thos. P. Fahey, Hearing Officer, marked Received March 25, 1944;

530-531, Signed carbon copy of my order in said proceeding No. FA-6, dated April 5, 1944, annulling Wholesaler's Basic Permit 13-P-37 previously issued to Levers Brothers (Forest E. Levers and Oran C. Dale, dba) with proof of service of original on James J. McNamara, attorney.

532, Copy of my letter dated April 5, 1944, to Forest E. Levers in said FA-6;

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ministrative record:

- 533, Signed carbon copy of my order in said proceeding No. FA-7, dated April 5, 1944, denying the application of Forest E. Levers, Co-partner; Forest E. Levers, Special Administrator of Levers Brothers, d.b.a. Levers Brothers, for Wholesaler's Basic Permit, with proof of service of original on James J. McNamara, attorney;
- 534, Carbon copy of my letter dated April 5, 1944, to said Levers in said FA-7, stating that the documents mentioned therein were being transmitted to him by registered mail, etc.;
- 535, Signed carbon copy of my order in said proceeding No. FA-8, denying the application of Forest E. Levers, Co-partner; Forest E. Levers, Special Administrator of Levers Brothers, d.b.a. Levers Brothers, for Importer's Basic Permit, with proof of service of the original on James J. McNamara, attorney; said order dated April 5, 1944;
- 536, Carbon copy of my letter dated April 5, 1944, to said Levers in said FA-8, stating that the documents mentioned therein were being transmitted to him by registered mail, etc.;
- 537, Both sides of original registered mail return-receipt card No. 225386, indicating that said Levers on April 10, 1944, received the documents mentioned in the above letters to him dated April 5, 1944;
- 538, Both sides of original registered mail return-receipt card No. 225387, indicating that said McNamara on April 8, 1944, received the originals of the last mentioned three orders, copy of last mentioned Findings of Fact and copies of my above three letters dated April 5, 1944;
- 539, Carbon copy of my letter dated May 8, 1944, to said Levers;

Pages of the hereby
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ministrative record:

540. Both sides of original registered mail return-receipt card indicating that said Levers on May 11, 1944, received the original of the letter last mentioned;

541-543. Carbon copy of my letter dated May 12, 1944, to said McNamara;

544. Original letter dated May 15, 1944, from said McNamara to me;

545. Carbon copy of my letter dated May 16, 1944, to said Levers;

546. Both sides of original registered mail return-receipt card indicating that said Levers on May 19, 1944, received the original of the letter last mentioned; and

547. Original letter dated May 17, 1944, from said McNamara to me.

A. V. ANDERSON, District Supervisor,
District 13, Alcohol Tax Unit,
Treasury Department, Denver,
Colo.

Sworn to and subscribed before me this 6th day of July, 1944, at Denver, Colorado. My Commission Expires April 3, 1945. Augustus N. Ritter, Notary Public. (Seal)

Filed July 6, 1944. Robert B. Cartwright, Clerk.

And thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Tenth Circuit:

Order of Submission.

Thirty-first Day, November Term, Monday, January 8th, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard, James J. McNamara, Esquire, appearing for petitioner, Arthur A. Alexander, Esquire, appearing for respondent.

On motion, respondent was granted leave to file twenty printed copies of his brief in this cause within five days from this day.

Thereupon this cause was argued by counsel and was submitted to the court.

Opinion.

[January 23, 1945.]

James J. McNamara for petitioner.

Arthur A. Alexander, Atty., Alcohol Tax Division, Bureau of Internal Revenue (Herbert Borkland, Sp. Asst. to the Atty. Gen., was with him on the brief) for respondent.

Before Phillips, Bratton, and Huxman, Circuit Judges.

PER CURIAM:

This is a petition to review three orders issued by the District Supervisor in charge of the Denver, Colorado, office of the Alcohol Tax Unit. The orders were issued under authority of §§ 4 (b) and 4 (c) (3) of the Federal Alcohol Administration Act, 27 U. S. C. A. §§ 201-211. The petition was filed under § 4 (b) of the Act.

One order annulled a basic permit and the other two orders denied applications for basic permits.

Petitioner filed his petition for review without applying

to the District Supervisor for a reconsideration of the orders or appealing from such orders to the Deputy Commissioner of Internal Revenue, both of which procedures are provided for in the regulations. A copy of the regulations was served on the petitioner prior to the hearing before the District Supervisor and was called to petitioner's attention when the orders were served on him.

Not having exhausted his administrative remedies, this court may not entertain his petition for review. *Peoria Braumeister Co. v. Yellowley*, 7 Cir., 123 F. 2d 637, 640; *Leebern v. United States*, 5 Cir., 124 F. 2d 505, 507.

It is true that an appeal to the Deputy Commissioner of Internal Revenue may no longer be a condition precedent to judicial review in view of amended regulation, § 182.257,¹ which in part provides:

"Appeal to the Commissioner is not required. However, the Commissioner may, in his discretion, in order to insure uniformity of administrative action, entertain an appeal, after review and reconsideration as provided in section 182.255, from an order of revocation of a basic permit by a district supervisor, if filed with the Commissioner within 10 days of the date of the final order."

But the amended regulations do not do away with the application for reconsideration, an administrative remedy not availed of by the petitioner. Petitioner cannot excuse his failure on the ground that his objections on an application for reconsideration would have been overruled and, therefore, such application would have been futile. *Red River Broadcasting Co. v. Federal Communications Commission*, App. D.C., 98 F. 2d 282, 288; *Gilchrist v. Interborough Co.*, 278 U.S. 159, 208, 209.

The petition is DISMISSED.

¹Fed. Register, Vol. 7, No. 49, March 12, 1942, pp. 1889-1890.

Order Dismissing Petition to Review.

Thirty-seventh Day, November Term, Tuesday, January 23rd, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the transcript of the record from the Alcohol Tax Unit, United States Treasury Department, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the petition to set aside orders of the Alcohol Tax Unit be and the same is hereby dismissed out of this court.

It is further ordered by the court that the clerk of this court forthwith transmit to the Alcohol Tax Unit, A. V. Anderson, District Supervisor, District Thirteen, a certified copy of this order.

Petition for Rehearing and Modification of Judgment.

Comes now Forest E. Levers, Administrator, your petitioner, and states that the decision and judgment of this Court heretofore rendered herein should be reconsidered to the end that petitioner's right to reconsideration under section 182.255 of the applicable regulations of the Bureau of Internal Revenue should be preserved for the reasons that:

1. Petitioner substantially fulfilled the requirements of section 182.255 in that he submitted to the Hearing Officer his particularized contentions that a decision by such officer adverse to his contentions would be contrary to law and not supported by the evidence, which contentions became and are part of the record in this cause and which, as such, were before the Respondent at the time he overruled such contentions and made his decision herein.

2. The regulations are obscure and by reason of the language of section 182.257 petitioner was misled into reaching the conclusion that an application to the District Supervisor for reconsideration was a part of administrative appeal procedure and not a distinct and separate administrative requirement.

3. That this opinion of petitioner was shared by the Alcohol Tax Unit was stated to this Court during the argument herein by the attorney for the Alcohol Tax Unit, appearing specially for the Department of Justice, who stated to the Court his embarrassment at being required by the exigencies of the situation to present to the Court the procedural views of the Department of Justice rather than those of the Alcohol Tax Unit.

4. That petitioner should not be required, at his peril, to choose between two methods of procedure, particularly where the regulations are not clear and where departments of the Government themselves differ as to the correct procedure, and where if he makes an erroneous choice, all opportunity to have questions of his rights reviewed is lost.

Wherefore, petitioner respectfully prays the Court to reconsider its decision herein and modify same so that petitioner's rights to administrative reconsideration and appeal shall be preserved.

JAS. J. McNAMARA,
Attorney for Petitioner.

The undersigned hereby certifies that the foregoing petition is not filed to cause vexation or delay but because he believes the matter is meritorious and worthy of the Court's attention.

JAS. J. McNAMARA.

Filed Feb. 13, 1945. Robert B. Cartwright, Clerk.

Order Denying Petition for Rehearing and
Modification of Judgment.

Fifty-third Day, November Term, Friday, February 23rd, A. D. 1945. Before Honorable Orie L. Phillips, Honorable Sam G. Bratton and Honorable Walter A. Huxman, Circuit Judges.

This cause came on to be heard on the petition of petitioner for a rehearing and modification of the judgment herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

Application for Stay of Execution and Enforcement.
and Order Thereon.

Thursday, March 1st, A. D. 1945. Before Honorable Sam G. Bratton, Circuit Judge, at Albuquerque, New Mexico.

To The Honorable Sam G. Bratton, Judge, United States Circuit Court of Appeals for the Tenth Circuit:

Forest E. Levers, Administrator, the above-named petitioner, feeling aggrieved by the judgment of the Court heretofore rendered herein, respectfully prays that the execution and enforcement of said judgment may be stayed for a reasonable time to enable petitioner to apply for and obtain a writ of certiorari from the Supreme Court of the United States.

JAS. J. McNAMARA,
Clovis, New Mexico,
Attorney for Petitioner.

Stay until April 1, 1945, is granted, in order that petition for certiorari may be presented to the Supreme Court of the United States. March 1, 1945.

SAM G. BRATTON, Circuit Judge.

Clerk's Certificate.

United States Circuit Court of Appeals, Tenth Circuit.

I, Robert B. Cartwright, Clerk of the United States Circuit Court of Appeals for the Tenth Circuit, do hereby certify the foregoing as a full, true, and complete copy of the designated transcript of the record from the Alcohol Tax Unit, and full, true, and complete copies of certain pleadings, record entries and proceedings, including the opinion (except full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States) had and filed in the United States Circuit Court of Appeals for the Tenth Circuit in a certain cause in said United States Circuit Court of Appeals, No. 2939, wherein

Forest E. Levers, Administrator of the Assets of a partnership formerly consisting of Forest E. Levers and Ray E. Levers, deceased, was petitioner, and A. V. Anderson, District Supervisor, Alcohol Tax Unit, was respondent, as full, true, and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit, at my office in Denver, Colorado this 12th day of March, A. D. 1945.

(Seal, U.S. Circuit
Court of Appeals,
Tenth Circuit)

ROBERT B. CARTWRIGHT,
Clerk of the United States
Circuit Court of Appeals,
Tenth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 7, 1945

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(9412)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1085

FOREST E. LEVERS, ADMINISTRATOR, ETC.,
Petitioner;

vs.

A. V. ANDERSON, DISTRICT SUPERVISOR, ALCOHOL TAX
UNIT

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT AND BRIEF IN SUP-
PORT THEREOF.

HUSTON THOMPSON,
HUGH H. OBEAR,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1085

FOREST E. LEVERS, ADMINISTRATOR, ETC.,
Petitioner,

vs.

A. V. ANDERSON, DISTRICT SUPERVISOR, ALCOHOL TAX
Unit,
Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT.**

*To the Honorable Chief Justice and the Associate Justices
of the Supreme Court of the United States:*

The petitioner, Forest E. Levers, special administrator of the assets of a partnership formerly consisting of Forest E. Levers and Ray E. Levers, deceased, duly appointed as such by the Probate Court of Chaves County, New Mexico, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Tenth Circuit entered in the above cause on the 23rd day of January, 1945.

Opinions Below

The opinion of the Circuit Court of Appeals (R. 457) is not as yet officially reported, nor is the order of that court overruling a petition for rehearing officially reported.

They are found at pp. 457, 460 of the Record.

The orders of the District Supervisor are found at pp. 421, 424, 426 of the Record.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on the 23rd day of January, 1945 (R. 457). The petition for a rehearing was overruled on the 23rd day of February, 1945 (R. 460).

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented

1. Whether the petitioner was required as a necessary step in exhausting the administrative remedy to file a petition for reconsideration before the District Supervisor of the Alcohol Tax Unit, after decision by that official and the entering of an order by him nullifying petitioner's basic permit authorizing the purchase or resale at whole sale of distilled spirits and denying Basic Applications for Wholesaler's and Importer's permits, respectively.

2. Whether, under the facts of this case, the District Supervisor was justified in annulling petitioner's permit and in declining to grant the application for two additional permits.

Summary Statement of Facts and the Proceedings and the Decisions Below

For approximately twenty years prior to the beginning of this proceeding Forest E. Levers and his brother Ray E. Levers, deceased, were in the business of selling and distributing distilled spirits, wine and malt beverages, covering a period before and after Prohibition, and from March 21, 1936, had a wholesaler's permit No. P-8482 under the Federal Alcohol Administration Act (Act of August 29, 1935, Ch. 814; 49 Stat. 977; 27 U. S. C. A. 201 as amended (hereinafter called the Act) and regulations thereunder until October 1, 1941, in the name of Levers Brothers.

On October 1, 1941, Ray E. Levers died, and upon petitioner's petition he was appointed by order of the Probate Court of Chaves County, dated October 6, 1941 (R. 166, 167) special administrator of the estate of Ray E. Levers, deceased, insofar as the partnership assets in the firm of Levers Brothers are concerned. As said special administrator he qualified by posting surety bond in the sum of \$25,000.00. He was *directed* and empowered by the Court to continue the business which had been known as Levers Brothers (R. 167). Thereafter, on October 10, 1941, upon application of the deceased's widow, Oran C. Dale, son-in-law of Ray E. Levers, was appointed co-administrator with petitioner (R. 168, 169).

The co-administrators applied for and were granted on December 26, 1941 (R. 170) a wholesaler's basic permit No. 13-P-37, which permit was subsequently annulled and the annulment of which is at issue herein.

Thereafter, Oran C. Dale, having been drafted into the United States Army, resigned as co-administrator and was discharged as such by the Probate Court (R. 179), and it became necessary for petitioner to apply for new permits.

Thereupon petitioner as co-partner and special adminis-

trator of the estate of Ray E. Levers applied on November 29, 1943, for wholesaler's basic permit to be designated as 13-P-66, and on the same date also applied for an importer's basic permit to be designated as 13-I-12. The aforesaid applications (Nos. 13-P-66 and 13-I-12) were applied for because of the retirement and discharge of said Oran C. Dale from the position of co-administrator (R. 171-177).

Permit No. 13-P-37 was annulled by the District Supervisor upon the ground that there were misrepresentations in the application made for said permit (R. 422), and the aforesaid applications for basic permits 13-P-66 and 13-I-12 were denied by the District Supervisor on the ground that applicant was not entitled to them for the reason that they "would not be maintained in conformity with the Federal laws and regulations" (R. 426). Basic permit 13-P-37 was annulled on April 5, 1944, and the two applications for permits 13-P-66 and 13-I-12 were denied on the same day (R. 421, 422, 426).

By reason of the annulment of the basic permit 13-P-37 and refusal of the applications for basic permits 13-P-66 and 13-I-12 the said business was threatened with extinction.

Despite their long continuance in the aforesaid business of selling and distributing distilled spirits, neither the petitioner nor Levers Brothers nor Ray E. Levers was ever convicted of a felony or misdemeanor under a Federal or State law, nor had a permit ever been suspended or revoked for any violation of the Federal Alcohol Administration Act or of the regulations thereunder.

The order annulling basic permit No. 13-P-37 on April 5, 1944, was a final order (R. 421, 422, 428). No petition for reconsideration was filed with the District Supervisor, as the law did not require it. Petitioner was advised by counsel and believed that such action on his part was not necessary before taking an appeal to the United States Circuit Court of Appeals, as permitted by statute, particularly

because petitioner was not seeking (1) to introduce new evidence in order to have the findings set aside, changed or modified, nor (2) because he claimed to have been misled by any change in rules, nor (3) because he claimed that he did not have a fair trial so far as being permitted to introduce evidence, nor (4) because petitioner was seeking to change any policy of the Department, and because petitioner believed that a reconsideration by the District Supervisor under the circumstances would have been an unnecessary and a vain act and would have resulted in needless delay in the prosecution of his appeal. Petitioner was also advised by his counsel that there was no case on record where a permittee was confronted with circumstances such as here, inbefore set forth. The Act, as amended, did not provide or require a petition for reconsideration be filed prior to taking an appeal, and Section 182.255 of Regulations 3, relied upon by the District Supervisor, was permissive and not mandatory.

It is, moreover, petitioner's contention that there is no case on record under the Federal Alcohol Administration Act where a permittee had his basic permit annulled, when the permittee had never been convicted of a felony or a misdemeanor either under the Federal or State law,¹ and where there had previously been no suspension of permit for violation of the said law or regulations under it; all of which facts would have been brought to the attention of the Circuit Court of Appeals had it reviewed the record in this case.

Appeal to the Circuit Court of Appeals

On May 18, 1944 petitioner filed his appeal as provided by Section 4 (h) of the Act, said petition for appeal stating,

¹ In one case (*Malloy v. Berkshire*, 143 F. (2) 218) the Court characterizes certain of the permittees as "bootleggers", during the prohibition era. It is assumed the Court would not have used that language had not the record disclosed such permittees to have been guilty of that crime.

among other things, that "all of the points upon which petitioner relied had been presented to and urged upon the Alcohol Tax Unit" (R. 2).

The Circuit Court of Appeals declined to consider the appeal, holding in effect that the petitioner's appeal was premature because he had not filed a petition for reconsideration before the District Supervisor (R. 457).

Statute and Regulations Involved

Applicable portions of the Federal Alcohol Administration Act and of the regulations involved in this case are set out in the appendix.

Specification of Errors to Be Urged

The Circuit Court of Appeals erred:

1. In refusing to take jurisdiction of this case.
2. In holding that petitioner had not exhausted his administrative remedies.
3. In failing to hold that under the circumstances of this particular case petitioner had substantially complied with the provisions of Section 182.255 of the regulations if they required application.
4. In causing a penalty to be inflicted upon petitioner through the dismissal of his petition that was more severe than is found in any recorded cause of a similar character.
5. In dismissing the appeal.

Reasons for Granting the Writ

- a. Because the Circuit Court of Appeals failed to give proper effect to the applicable decision of this court (*Pendergast v. New York Telephone Co.*, 262 U. S. 43, 48), in

holding that petitioner was required to file a petition for reconsideration before the District Supervisor.

b. Because of the importance of the question involved in judicial review of administrative proceedings.

c. Because the Circuit Court of Appeals denied petitioner the right of judicial review, granted him by Federal statute, in the case of an administrative order.

d. Because the Circuit Court of Appeals denied petitioner due process of law guaranteed him by the Fifth Amendment of the Constitution of the United States.

Conclusion

Wherefore, petitioner respectfully prays that the writ of certiorari may issue.

HUSTON THOMPSON,
HUGH H. OBEAR,
Attorneys for Petitioner.

Dated Washington, D. C., March 27th, 1945.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1944

No. 1085

FOREST E. LEVERS, ADMINISTRATOR, ETC.,

Petitioner,

vs.

A. V. ANDERSON, DISTRICT SUPERVISOR,
ALCOHOL TAX UNIT,

Respondent.

**BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI**

POINT I

The filing of a "Petition for Reconsideration" before the same officer, board, commission, or tribunal that has finally passed upon a matter is not and should not be an indispensable step in exhausting the administrative remedy.

POINT II

The requirements of the statute concerning judicial review were complied with.

POINT III

The requirements of Section 182.255 of Regulations 3, if applicable to petitioner's case, are not mandatory but permissive merely.

POINT IV

Section 182.255 as applied to the record herein is clearly permissive.

POINT V

The facts in the instant case present a situation calling for review of the record by the Court and a correction of the action by the District Supervisor.

POINT I

The filing of a "Petition for Reconsideration" before the same officer, Board, Commission, or tribunal that has finally passed upon a matter is not and should not be an indispensable step in exhausting the administrative remedy.

This Court has held that application to a commission for a rehearing is not a necessary prerequisite to the bringing of suit.

In *Prendergast v. New York Telephone Company*, (*supra*) the District Court of the United States for the Southern District of New York granted an injunction against the enforcement of telephone rates established by the Public Service Commission of New York.

One of the defenses interposed by the Telephone Company was that the bill was prematurely filed because no petition for a rehearing had been made. This Court rejected this contention, saying:

"Upon the making by the commission of the orders in question the proceedings had reached the judicial stage entitling the company to resort to the court for relief. *Bacon v. Rutland R. Co.* 232 U. S. 134, 137, 58 L. Ed. 538, 539, 34 Sup. Ct. Rep. 283, distinguishing *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210, 229, 53 L. Ed. 150, 160, 29 Sup. Ct. Rep. 67, in which an appeal had not been taken to the highest tribunal vested

with the final legislative authority of the state. Here the commission is vested with the final legislative authority of the state in the rate-making process; the authority exercised by the state courts upon a review by certiorari (*People ex rel. Central Park, N & E River R. Co. v. Willcox*, 194 N. Y. 383, 87 N. E. 517), being purely judicial and having no legislative character (*Laws New York 1920*, chap. 925, § 1304, 1305, pp. 437, 438).

*"It was not necessary that the company should apply to the commission for a rehearing before resorting to the court. While, under the Public Service Commission Law, any person interested in an order of the commission has the right to apply for a rehearing, the commission is not required to grant such rehearing unless, in its judgment, sufficient reason therefor appear; the application for the rehearing does not excuse compliance with the order or its enforcement except as the commission may direct; and any change made in the original order upon the rehearing does not affect the enforcement of any right arising from the original order (§22). As the law does not require an application for a rehearing to be made, and its granting is entirely within the discretion of the commission, we see no reason for requiring it to be made as a condition precedent to the bringing of a suit to enjoin the enforcement of the order. See, by analogy, *Hollis v. Kutz*, 255 U. S. 452, 454, 65 L. Ed. 727, 728, 41 Sup. Ct. Rep. 371; *Re Arkansas Rate Cases* (C. C.) 187 Fed. 290, 306; *Atlantic Coast Line R. Co. v. Interstate Commerce Commission* (Comp. Ct.) 194 Fed. 449, 452; *Baltimore & O. R. Co. v. Railroad Commission* (C. C.) 196 Fed. 690, 693, 699 and *Chicago R. Co. v. Illinois Commerce Commission* (D. C.) 277 Fed. 970, 974. In *Palermo Land & Water Co. v. Railroad Commission* (D. C.) P. U. R. 1916E, 437, 227 Fed. 708, the statute specifically provided that no cause of action should accrue in any court out of any order of the commission unless an application for a rehearing had been made. Here the commission did not suggest in its answer that it*

perceived any ground upon which it would have granted a rehearing if an application had been made; but, on the contrary, maintained the correctness of its orders in all respects. Manifestly, under such circumstances, the injunction should not have been denied merely because application had not been made to the commission for a rehearing." (Italics ours):

That petitions for rehearing or reconsideration are *not now and should not be essential prerequisites to filing suit* is unquestionably the view of the organized bar of the United States.

In the American Bar Association's Legislative Proposal on Federal Administrative Procedure (1944) through its Special Committee on Administrative Law we find the following provisions with respect to Judicial Review:

"Section 9 (d) *Reviewable acts*.—Any rule shall be reviewable as provided in this section upon its judicial or administrative application or threatened application to any person, situation, or subject; and, whether or not declaratory or negative in form or substance, any administrative act or order directing action, assessing penalties, prohibiting conduct, affecting rights or property, or denying in whole or in part claimed rights, remedies, privileges, permissions, moneys, or benefits under the Constitution, Statutes, or other law of the land, except in matters expressly committed by law to absolute executive discretion, shall be subject to review pursuant to this section: *Provided, however,* that only final actions, rules or orders, or those for which there is no other adequate judicial remedy (including the neglect, failure, or refusal of any agency to act upon any application for a rule, order, permission, or the amendment or modification thereof, within the time prescribed by law or within a reasonable time), shall be subject to such review; any preliminary or intermediate act or order not directly reviewable shall be subject to review upon the review of final acts, rules, or orders; and any action, rule, or order

shall be final for purposes of the review guaranteed by this section notwithstanding that no petition for rehearing, reconsideration, reopening or declaratory order has been presented to or ruled upon by the agency involved." (Italics ours.)

and in the explanatory statement (page 7) referring to Section 9 (Judicial Review) the monograph says that it "*restates existing rights of judicial review, with a specification of the categories of questions so reviewable.*" (Italics ours.)

In the various Law Review notes and articles where the subject is most frequently treated, we find a like accord as to existing law.

In a note on "Administrative Action as a Prerequisite of Judicial Relief"—35 Columbia Law Review, 240, 241 (1935),

"In applying the exhaustion doctrine, it is important to determine how far a litigant must proceed in invoking the administrative remedy:"

"The next step in the administrative process after the hearing is the petition for rehearing before the same board."

"It would seem proper that one who has applied for a rehearing should be required to wait until his petition has been passed upon by the board. * * *

"But if no such application has been made the additional delay and the apparent futility of the rehearing have persuaded the courts, except where constrained by statute, to dispense with it."

In Note 51 Harvard Law Review, 1251, 1252, "Primary Jurisdiction—Effect of Administrative Remedies on the Jurisdiction of the Courts" it is said:

"The question arises as to when the administrative remedy has been pursued far enough. * * *

“Usually the courts do not require application to the Commission for a rehearing before suit may be maintained.”

“But if the statutes *expressly* require a petition for rehearing before a cause of action arises from a commission order the courts will give full effect thereto. Citing: *Palerino Land & Water Co. v. R. R. Com.* 227 Fed. 708 (N. D. Calif. 1915); *McArdle v. Board of Commrs.*, 195 Ind. 281 (1924)”

In the instant case the statute does not require a petition for a reconsideration. The Act is silent, while the Regulation under it is expressed in the permissive language of “may.”

“Exhaustion of Administrative Remedies” by Rooul Berger, 48 Yale Law Journal, 981, 988:

“The question of whether an application for an administrative rehearing is a necessary element of exhaustion and whether exhaustion is required where it is anticipated that administrative action will be unfavorable have likewise given rise to uncertainty. In an early case, *Vandalia Railroad Company v. Public Service Commission*, 242 U. S. 255, 260 (1916) which involved an Indiana statute declaring that ‘the Commission shall have authority’ to grant a rehearing, the Supreme Court held a failure to apply for an administrative rehearing precluded resort to the courts. A few years later in *Prendergast v. N. Y. Tel. Co.*, 262 U. S. 43, 48 (1923) the Supreme Court, making no mention of the *Vandalia* case declared that exhaustion was unnecessary where the statute did not *require* an application for re-hearing. As a result, courts have demanded an application for an administrative rehearing as a preliminary to judicial relief *only where the statute required such application.*”

In a Note in *California Law Review*, Vol. 29, pp. 515, 516:

“Courts are unanimous in requiring exhaustion as a general proposition, but there is much difference in

judicial opinion as to when the requirement has been satisfied and when it will be omitted. When a hearing before an administrative tribunal has been provided, a mere oral protest thereto will not satisfy the requirement and all courts require a litigant to take an administrative appeal but there is some doubt as to whether a *petition for a rehearing* before the administrative board is essential to exhaust the remedy." "Where a *statute* provides for a rehearing and is construed to be mandatory rather than permissive it is universally held that one must be applied for or the remedy has not been exhausted. On the other hand, where no *statutory* provision is made therefor, the requirement for a rehearing has been dispensed with on the ground that it would involve additional delay and would probably be futile anyway."

The cases cited in the Circuit Court of Appeals opinion were vastly different from the present case.

While *Peoria Braumcister Company v. Yellowley*, 7 Cir. 123 F. (2) 637, 640; and *Leebern v. United States*, 5th Cir. 124 F. (2) 505, 507 (both being cases under this Act) held that the petitioner, in those cases, had not exhausted his administrative remedy, both cases were on appeal prior to the amendment of the regulations which did away with the necessity of an appeal to the Deputy Commissioner, and the circumstances differed greatly, as will hereinafter be shown.

When this appeal was taken Section 182.257 of Regulations 3 expressly provided that "appeal to the Commissioner is not required." The *Gilchrist* case (*Gilchrist v. Interborough Company*, 279 U. S. 159, was simply a case of where the petitioner had filed a bill in court before the Commission had entered its order. It is pointed out by the court on page 206,

"Prior to February 14, 1928, the Commission took no official action. But it appears that counsel for the Commission and the Mayor express the opinion that

no relief should or would be granted, and perhaps used some threatening and ill-advised language. * * *

At 9:20 a.m. February 14, 1928, the original bill now before us was filed. * * * Later during the same morning the Transit Commission entered an order which denied its authority to grant the new rates. * * *

And at pages 208-209 the Court said:

"* * * the Interborough Company could not have resorted to a Federal court without first applying to the Commission as prescribed by the statute; and having made such an application, it could not defeat or deride action by alleging an *intent* to deny the relief sought." (Italics supplied.)

Clearly the *Gilchrist* case was one in which an order had not become *final* and is not in point.

The *Red River Broadcasting* case (*Red River Broadcasting Company v. Federal Communications Commission*; Baxter intervener), United States Court of Appeals for the District of Columbia, 98 F. (2d) 282, was one in which the Red River Broadcasting Company, which took the appeal to the Circuit Court of Appeals, never attempted to become a party to the proceedings before the Communications Commission. It sought for the *first time to enter the proceedings by the appeal*, and as Judge Miller pointed out, the Communications Act clearly indicated that interested and aggrieved persons *should first appear* before the Commission and there assert their rights. It is not in point.

NO APPEAL TO THE DEPUTY COMMISSIONER WAS REQUIRED

The Circuit Court of Appeals said (R. 458):

"It is true that an appeal to the Deputy Commissioner of Internal Revenue may no longer be a condi-

tion precedent to judicial review in view of the amended regulation, Section 182-257, which in part provides:

"Appeal to the Commissioner is not required."

"But the amended regulations do not do away with application for reconsideration; an administrative remedy not availed of by the petitioner."
(Italics supplied.)

It thus seems clear that the Circuit Court of Appeals based its opinion upon the claimed failure of petitioner to file a petition for reconsideration, and in so holding, its ruling was contrary to the applicable decision of this court in *Prendergast v. New York Telephone Company, supra*, and to the proper interpretation to be placed upon administrative procedure.

POINT II

The requirements of the statute concerning judicial review were complied with

There was no requirement under the statute that petitioner file a petition for reconsideration before taking an appeal to the Circuit Court of Appeals.

The requirements of the statute are merely that:

"An appeal may be taken by the permittee * * * from any order * * * annulling a basic permit.

"No objection to the order * * * shall be considered by the Court unless such objection shall have been urged before the Administrator."

The order appealed from was precisely that sort of order. It was a final order. Every point urged upon the Appellate Court had been urged upon the Alcohol Tax Unit (R. 2). Nothing new was offered in the Circuit Court of Appeals that was not urged upon the District Supervisor.

Point III

The requirements of Section 182.255 of Regulation 3, if applicable to Petitioner's case, are not mandatory, but permissive merely.

The regulation in question provides:

"Within 2 days after an order is made by the Commissioner or district supervisor *revoking* a basic permit, the permittee *may* file an application with such Commissioner or district supervisor, for a reconsideration of such order, on one or more of the following grounds:

- (1) The order is contrary to law, or
- (2) ~~is~~ not supported by the evidence, or
- (3) Because of newly discovered evidence which the permittee, with due diligence, was unable to produce at the hearing, etc. * * *

It is submitted that the words "*may* file" in this situation mean precisely what they say—"may file" and not "*must* file."

It is nothing more, in effect, than the same privilege permitted any litigant in court to file a motion for a new trial in a District Court before appealing to a Circuit Court of Appeals, or to file a petition for rehearing in a Circuit Court of Appeals before applying to this Court for a petition for certiorari.

The permissive nature of the petition for reconsideration is clearly indicated in the monograph of the Attorney General's Committee in Administration Procedure in Government Agencies (1940) "Part 5 Federal Alcohol Administration", page 28, where it is said:

"Petitions for reconsideration, though permissible under the rules of practice (55),² have rarely been filed,

² The footnote reference (55) in the above quotation is to Regulations No. 1 (1935) art. IV, sec. 5. That regulation was in fact stronger than Sec. 182.255.

and then only in cases in which the parties have discovered new evidence on the basis of which reopening of the hearing was requested. These petitions have always been granted and have resulted in the designation of the matter for further hearing."

It is submitted that regulation 182.255 did not require petitioner to file a petition for reconsideration, for the reasons above set forth.

POINT IV

Petitioner maintains that Section 182.255 is not indefinite if applied in the light of the Federal Alcohol Administration Act and the record herein.

If there is an ambiguity in the interpretation of Section 182.255 it arises because of the interpretation put upon it by the District Supervisor and the refusal of the Court of Appeals to take jurisdiction because of that interpretation.

In the light of the declaration of the American Bar Association Legislative Proposal on Federal Administrative Procedure (1944), through its Special Committee on Administrative Law, *supra*, the Note on "Administrative Action as a Prerequisite of Judicial Relief" from the Columbia Law Review, *supra*; Note 51 Harvard Law Review, *supra*, the "Exhaustion of Administrative Remedies" by Roul Berger, Yale Law Journal, *supra*, the Note in the California Law Review, *supra*, and the cases from this Court on the subject, differentiating the necessity and the non-necessity for a rehearing as a prerequisite to appeal to

Section 5 of Regulations 4 is as follows:

"Sec. 5. *Reconsideration of orders.*—Within 10 days after service of the order of the Administrator denying a permit application or *revoking, suspending or annulling* a basic permit, or within such further time as the Administrator, in his discretion, may allow, the applicant or the respondent, as the case may be, may file a petition under oath with the Administrator for reconsideration of such order, stating therein the grounds relied upon. * * * (Italics ours.)

the courts, it is respectfully submitted by the petitioner that the interpretation put upon the permissive language of Section 182.255 in this case was not unreasonable and should have been the basis for the acceptance of jurisdiction by the Court of Appeals. It was only when the Court of Appeals interpreted the permissive language of the Regulation as mandatory, when the statute was silent as to procedure, that a cloud of ambiguity began to be cast over Section 182.255. Apropos of the right and necessity for review from the actions and orders of administrative bodies, the remarks made by Senator Wayne L. Morse, who has just come to the United States Senate from the War Labor Board, in connection with an amendment offered by him to the proposed War Manpower Commission legislation, becomes very suggestive here. The debate on this subject is found in the current Congressional Record, No. 44, March 8, 1945, page 1950 and thereafter. Senator Morse said, in part, as follows:

“There is growing up in this country a trend toward * * * administration of law by the executive branch of Government through administrative officers who, in my judgment, do not have their opinions and views sufficiently checked by other branches of Government. I think it is a dangerous trend.

“It is proposed that the man whose regulations may be challenged by a citizen * * * shall be given the power to set up his own tribunal to judge whether or not he, in fact, has been unreasonable in the exercise of his duties under the act.

“I think it is a very bad principle of government * * * to give the power to pass upon * * * regulations to a tribunal appointed by the administrator himself.

“As a result of my experience with some of the appeal tribunals * * * I have no illusion with regard to them, and I should like to prevent the repetition of such a mistake in this particular bill.

"We know how they would work in practice. We know that in practice the chairman of the War Manpower Commission would, by and large, call the shots under the proposed act. * * * I believe (this) irrespective of who occupies the position. I intend no personal reference. The citizen should have protection from the arbitrary exercise of power * * *"

It is suggested that in the light of the foregoing references and statements this Court may well consider the plight of attorneys, no matter how learned, in attempting to advise with respect to the language of administrative regulations couched in permissive words.

POINT V

The facts in the instant case present a situation calling for review of the record by the Court and a correction of the action by the District Supervisor.

In *Pottsville Broadcasting Company v. Federal Communications Commission*, 98 F. (2) 288, the Company applied for a permit to construct a broadcasting station in Pottsville, Pennsylvania. Charles D. Drayton, in Washington, D. C., was the President of the Company and potentially the heaviest stockholder.

The application was denied by the Pennsylvania Securities Commission, which held that there was not a sufficient showing of financial ability in the applicant, and that Drayton, not a resident of Pottsville, was not familiar with the needs of the listening audience in that region. The Court (Groner, C. J.) sent the case back to the Commission for reconsideration and said:

"If the Commission should be of opinion, upon reconsideration, that the application ought not to be granted because a stranger to Pottsville has the controlling financial interest in the applicant corporation,

and should announce a policy with relation to the grant of local station licenses, confining them to local people, we should not suggest the substitution of another view. But in saying this we are not unmindful of the obvious fact that such a rule might seriously hamper the development of backward and outlying areas."

In *Atlanta Beer Distributing Company, Inc. v. Alexander, Federal Alcohol Administrator*, 93 F. (2d) 11, petitioner applied for a permit to engage in the business of purchasing at wholesale wine and malted liquors, etc. The hearing officer recommended denial of the application. Exceptions were filed and overruled by the Administrator.

The President-Treasurer of the Corporation had a criminal record consisting of five convictions in State and Federal courts. It was on this ground that the Administrator denied the application for a permit, saying "that the corporation was not likely to maintain its operations in conformity to federal law." The majority opinion of the Court stated that:

"No objection to the order shall be considered by the court unless it shall have been urged before the Administrator, *or there were reasonable grounds for failure so to do.*" (Italics supplied.)

In contrast to the instant case the question was (1) not the consideration of the issuance of basic permit No. 13-P-37, but the *annulment* of this permit issued approximately three-years before; (2) applicant and his associates had never been convicted of a felony or misdemeanor in a Federal or State court nor had had a suspension of a license; (3) petitioner was not asking the Court to upset the findings of fact, as in the case of *Atlanta Beer Distributing Company, Inc.*, supra.

On the other hand, the District Supervisor was acting upon a mistake of law, both arbitrarily and capriciously

to the prejudice of petitioner, since the above facts were sufficient to permit petitioner to read the rules as permissive and the case should have been returned to the Supervisor.

Judge Hutcheson in his dissenting opinion uttered words that could well be considered in the instant case, when he said (p. 13):

"The result of the action of the Administrator, therefore, in, as appellant claims, arbitrarily refusing a permit is not to prevent applicant's entering into new business, *but it is to take from it and destroy the established business and capital which it has already built up* * * *. I think that under the facts disclosed, the Administrator could not deny the permit except upon the clearest showing that one of the statutory grounds for refusing it existed." (Italics supplied.)

In the instant case the Circuit Court of Appeals apparently made its decision solely on the technical ground that the petitioner failed to ask for a reconsideration.

In *Arrow Distilleries v. Alexander*, 109 F. (2) 397, the petitioner's license was suspended because (1) he had falsified certain records which were to be kept by the holders of basic permits; (2) misbranded bottles of whiskey by misdating their age; (3) sold spirits in bottles in interstate commerce for which the petitioner had received no certificate of label approval. Note that the permits were *suspended* but *not annulled*, so that the petitioner had the opportunity of rectifying any violations without having its business and assets destroyed.

In contrast, in the instant case there is no substantial testimony showing that after the granting of basic permit No. 13-P-37 to officers of a court they knowingly and intentionally violated the law or regulations. Yet the things for which they were charged during that period such as "exclusive outlet" control and "tied house", inducements

as in U. S. C. A. Section 205(a) and (b) respectively, were certainly not as offensive to the law as were those in the above case. Nevertheless, the Supervisor did not annul the permit.

In the case of the *Middlesboro Liquor and Wine Company, Inc. v. Berkshire*, 133 F. (2) 39, the facts were that a wholesaler's basic permit was issued to appellant. Four years later it was annulled, and appeal taken to the U. S. Court of Appeals for the District of Columbia. The appellant's permit was procured through fraud and concealment and misrepresentation of a material fact in that the true interest of Floyd Ball, the principal stockholder, member of its Board of Directors and Secretary-Treasurer was concealed, he being a person with a criminal record, and had not divested himself of an interest in the Company.

In arriving at its decision the Court went very thoroughly into the record.

In the opinion, Justice Miller made a distinction between annulment proceedings and those for suspension or revocation. Referring to the limitations of Section 4(i) of the Act he said:

"However, those limitations have no relation to annulment proceedings. They are specifically confined to proceedings for suspension or revocation. This is even more clearly shown by reference to Section 4(e) in which the three distinct types of disciplinary action are enumerated and defined. An entirely different situation exists when it appears that a permit has been procured by fraud, misrepresentation or concealment than when a permit has been properly procured but has been improperly used. Proceedings to suspend or revoke are concerned with nonuser or *misuser after the granting of the permit.*" (Italics supplied.)

In contrast, in the instant case, (1) there was no criminal record to consider; (2) the application for Permit No. 13-P-

37 was made by the permittees, officers of a Court; (3) there was no substantial evidence that could be applied to these officers, not only because Mr. Ray E. Levers, against whom most of the evidence was given, was dead, but because the applicants were either new or had completely changed their position and approached the Unit as officers of the Court, ordered by a Court to carry on the business. Therefore, the District Supervisor should in no sense have considered the case as one calling for annulment but, if at all, following the distinction made by Justice Miller, one of misuser after the granting of the permit. In not considering the record the court apparently did not review the transcript, which would have illuminated all these points.

In the case of *Monarch Distributing Company v. Alexander, et al.*, 119 F. (2) 953, the question was the refusal to grant petitioner a basic permit. At the hearing on the application, subsequent to the date of the original petition but prior to final amendment thereof, it appeared that petitioner and certain of its successive Presidents had been convicted in the U. S. District Court of felonies and misdemeanors. The only question involved was whether these convictions, secured after the date of filing the original petition, were a bar to the issuance of the permit, in view of the fact that the statute prohibits permits only to persons convicted "within five years prior to date of application." The court held that it was immaterial when the conviction occurred so long as it was within five years.

In contrast, in the instant case (1) the basic permit had already been issued, so the value of a going business was involved; (2) there was no question of criminal records; (3) applicants were in a totally different position from those in the above case and, if any correction of their acts was needed, it could have been easily handled under a suspension and not an annulment of a business that was within the active jurisdiction, control and supervision of a Court.

(4) that to annul the business under such circumstances would take the case completely out from under any precedent that might be set up in the *Mogarch Distributing Company case, supra*.

In the case of *Commissioner of Internal Revenue v. Aluminum Company*, 142 F. (2) 663; the Circuit Court of Appeals held that a Treasury Regulation which exceeds legislative intent of the Act, which it purports to interpret for administrative purposes, is of no effect.

The Federal Alcohol Administration Act provides for annulment but does not set up administrative procedure therein. The Federal Alcohol Unit, however, promulgated Section 182.255 for procedural purposes. This regulation provided for an application for reconsideration of an order to the author of the order, to wit, the District Supervisor. But the courts have, in reality, suggested in their respective opinions the conditions on which it would be unnecessary to ask for reconsideration from the same official, before a hearing in the Circuit Court of Appeals, as for example, (1) where no new evidence was offered in order to have the findings set aside, changed or modified; (2) no claim that a petitioner has been misled by change in rules; (3) nor that he did not have a fair trial so far as being permitted to introduce evidence; or (4) because petitioner was not seeking to change a policy of the department. In the instant case none of these grounds was asserted.

In order to interpret the regulation as mandatory, the burden was on the respondent to show the absence of any or all of the above conditions. In their absence respondent acted arbitrarily and capriciously.

In the case of *Peoria Braumeister Company v. Yellowley, supra*, the basic permit to engage in sale and distribution of intoxicating liquors was *suspended*—not annulled. The charge was falsifying records and failure to keep records at

its place of business. The case does not state in what respect petitioner falsified.

The position of the Government was that the respondent had no right to appeal to the court until it had exhausted its remedies before the Commissioner and the Department, as provided by the regulations.

Judge Minton of the 7th Circuit said that the petitioner had not exhausted its remedy until it asked for a reconsideration.

In contrast the same charge is made in the instant case as in the above case, to wit, that the petitioner falsified its records. Yet the Commissioner on such a charge did not annul but only suspended the permit and thus gave the applicant an opportunity of correcting any mistakes or wrongs and not destroying the business of the petitioner outright.

In the case of *Malloy & Company v. Berkshire et al.* (2nd Circuit) 143 F. (2) 218, the charge was that the dealer's basic permit was procured by fraud and misrepresentation and concealment of material facts that justified annulling the permit. A questionnaire required the Corporation to state the amount of capital stock, addresses of directors, officers, stockholders, etc., whether the applicant was a successor or under substantially the same control or financed by substantially the same interests; the source of funds invested, the names and addresses of persons who held or were expected to hold a substantial interest.

Four of the stockholders who were officers and directors had been engaged in bootlegging during the prohibition years. The respectable names of Thomas J. Malloy, President, and one Bomzon, were being used as a front. Neither one had ever actually put any money into the Corporation, whereas four bootleggers were the real financiers.

The Court held that the hearing officer had ample justification for holding that there were concealments and mis-

representations that were material, because the money supplied and the principals had been connected with the bootleg business and that this had not been disclosed. The Court further said that the Administrator had the right to know with whom he was dealing.

In contrast in the instant case, the Alcohol Tax Unit knew that those applying for the permit were officers of the Court. Neither they nor their predecessors had had any bootlegging record nor had been found guilty of a felony or misdemeanor either under the Federal or State laws.

In *Mallory Coal Company v. National Bituminous Coal Commission*, 99 F. (2) 399, Mr. Justice Miller said (p. 402):

"Several tests have been used by the courts to determine whether particular orders (of Commissions) were reviewable under similar provisions in other statutes." (Parentheses ours.)

Summing up the tests as to whether an order is final and it is time for judicial review, the Court said:

"If the order in the particular case is definitive rather than preliminary or procedural; if the order operates particularly upon the person seeking review, rather than upon the world generally or upon a large group of interested persons; if the order was entered in a proceeding, adversary in character, after notice given, with a hearing at which witnesses were examined and points of law argued, and in which findings of fact were made; if a petition for rehearing was filed urging, upon the Commission the objection to the order now urged for the consideration of the Court; each of these circumstances—and more particularly all of them together—may indicate that the administrative remedy has been exhausted and that it is time for judicial review. Until that time comes, the matter should remain in the control of the administrative agency."

Any one of the first three conditions laid down by the court was sufficient to make the order appealable. All

three were present in the instant case. Hence the order which the District Supervisor entered in the instant case comes within the definition laid down by Mr. Justice Miller as final and appealable.

In the case of *Straus v. Berkshire*, 132 F. (2d) 530, the question was whether the Deputy Commissioner of Internal Revenue had the authority to *suspend* the permit for a period of ninety days. The permittee asserted (1) that the amount of the suspension was too great for the offense, (2) that the suspension for three months amounted to a revocation of the permit.

Permittee had failed to present any basis in the record for showing that the suspension was unreasonable, arbitrary and capricious. Nevertheless, the permittee sought to have the case sent back to the administrative officer in order to introduce evidence to show that the suspension amounted to revocation.

In contrast the instant case (1) calls for complete annulment and not suspension; (2) there is no expressed desire to offer any evidence to change the record; (3) the annulment in the instant case would mean complete annihilation of the business; (4) the record in the instant case does, under the circumstances, show the order to be unreasonable, arbitrary and capricious in that the application was made by officers of the court who were under the control of that court, whose record was clear of crime or misdemeanor and whose actions, if in any way wrong, could have been corrected during a suspension period; all of which was evident from the record.

In the case of *Leebern v. United States*, *supra*, the facts were that the petitioner violated the provisions of Section 5 (b) of the Act by furnishing money to retail liquor dealers to buy licenses, endorsing and guaranteeing their notes, acquiring and holding an interest in their licenses, acquiring an interest in real and personal property owned, occupied

and used by them in the conduct of their business, furnishing money, renting and selling them equipment, fixtures, supplies, etc., all of which was done to prevent other persons from selling to these retailers. For these violations the permit was suspended for *only* sixty days. The court held that:

"It functions as a tribunal of last resort set up in the statute itself for correction of errors of law committed and not corrected, in the course of the administrative procedure."

In contrast, let us assume in the instant case, that the transcript shows a case as strongly and frequently violative of the law as in the *Leebern* case. Nevertheless, the District Supervisor did not annul the permit but only suspended it for sixty days.

Furthermore, the strong intimation in the *Leebern* case is that the appeal was frivolous and groundless. The petitioner had admitted that the evidence showed, and the admissions of petitioner established, that he did the acts with the intent on his part to influence dealers to buy their liquors from him, to the partial or whole exclusion of liquors sold by others. Certainly no such contention can be read into the record and transcript in the instant case.

Under the *Leebern* case there would be no point in the Circuit Court of Appeals going into the record, as the petition admitted all the charges. But in contrast, in the record in the instant case there is no such admission on the part of the petitioner that under Permit No. 13-P-37 he admitted all or any of the charges upon which the findings were based.

The court said in the *Leebern* case that:

"The vital consideration in such procedures as the one in question here, is the furnishing of a just, fair, and an adequate administrative procedure, which will preserve the rights of the permittee against arbitrary

and unlawful action with a minimum of resort to court review."

Such language is applicable to the situation in the instant case. Hence, we maintain that the court in the instant case was confronted with an entirely different situation and one in which it is respectfully suggested the record should have been considered.

Conclusion

It is respectfully submitted, in the light of the Act, the Regulation in question, and the cases heretofore analyzed, where a final order is issued by a District Supervisor, and the petitioner is not seeking review of a basic permit to be issued, but one long since issued, that a reviewing court should consider the following factors: (1) that the applicant was well and officially known to the A. T. U.; (2) that the permittee or his associates had not been convicted of a crime either under a Federal or State law; (3) that neither he nor his associates had had a permit suspended; (4) that the permittee was not desiring to offer evidence to have the evidence changed; (5) that petitioner was not claiming that he was misled by a change in the requirement; (6) nor that he did not have a fair trial in so far as being permitted to introduce evidence was concerned; (7) nor that he was not seeking to change a policy of the department; but (8) that the rule prescribing procedure for a reconsideration in this case used the permissive word "*may*" and not the mandatory words "*shall*" or "*must*."

Under such conditions it is respectfully submitted that permittee and counsel had the right to read the Regulation as permissive and should not have been required to apply for a rehearing before the same officer who issued the order.

It is further submitted that the Circuit Court of Appeals should have considered the record and taken the aforesaid matters into consideration and not refused to grant an

appeal, thereby utterly destroying a business that was under the control and supervision of a State Court.

Finally, it is respectfully submitted since there was no provision of the Act *requiring* the filing of a petition for reconsideration, the conclusion of the Circuit Court of Appeals that such a petition was an indispensable step in exhausting the administrative process was a grievous error and one which will tend to great confusion and injustice in judicial review of administrative orders unless corrected by this Court.

Respectfully submitted,

HUSTON THOMPSON,
HUGH H. OBEAR,
Attorneys for Petitioner.

APPENDIX

A. The Federal Alcohol Administration Act

The following provisions of the Federal Alcohol Administration Act (Act of August 29, 1935, ch. 814, 49 Stat., 977 ff; 27 U. S. C. A., 201 ff) as amended and in effect on January 1, 1941, are those having a bearing upon this petition.

Section 4. (h).

"An appeal may be taken by the permittee or applicant for a permit from any order of the Administrator denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Administrator, or upon any officer designated by him for that purpose, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. The finding of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to

adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Administrator shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall, unless specifically ordered by the court to the contrary, operate as a stay of the Administrator's order.

B. Regulations 3 of Bureau of Internal Revenue

Sec. 182.255 Reconsideration of Order Revoking Permit—(a) *Time for filing application.*—Within 20 days after an order is made by the Commissioner or district supervisor revoking a basic permit, the permittee may file an application with such Commissioner or district supervisor, for a reconsideration of such order, on one or more of the following grounds:

- (1) The order is contrary to law, or
- (2) Is not supported by the evidence; or
- (3) Because of newly discovered evidence which the permittee, with due diligence, was unable to produce at the hearing.

If the application is based on grounds (1) or (2), the permittee shall specify therein, by reference to the record, in what respects the order is contrary to law or is not supported by the evidence, as the case may be.

If the application is based on ground (3), the permittee shall summarize therein the newly discovered evidence and set forth why he was unable to produce such evidence prior to the closing of the record.

(b) *Time of hearing.*—The Commissioner or district supervisor, with whom such application is filed, may hear the application on a date and at a place to be fixed by him. The Commissioner or district supervisor, as the case may be, after hearing such application, may either affirm the order of revocation previously made, or may vacate and set aside such order and dismiss the proceedings or order a new hearing of the evidence before a designated hearing officer.

(c) *Permit privileges.*—During the period above provided for filing application for reconsideration, and until final order is duly made after such reconsideration, if such application is filed within the time provided therefor, the permit involved shall continue in force and effect, except as to restrictions on withdrawals or transportation as may be ordered by the Commissioner or district supervisor, as provided in section 182.245. (*; Secs. 3114, 3121 (b), 3170, I. R. C.) Sec. 182.257 Appeal to the Commissioner.—Appeal to the Commissioner is not required. However, the Commissioner may, in his discretion, in order to insure uniformity of administrative action, entertain an appeal, after review and reconsideration as provided in section 182.255, from an order of revocation of a basic permit by a district supervisor, if filed with the Commissioner within 10 days of the date of the final order.

(a) *Petition.*—The petition for review must set forth facts tending to show action of an arbitrary nature, or of a proceeding and action contrary to law or regulations. No objection to the final order of the district supervisor will be considered by the Commissioner unless such objection was urged before the district supervisor in the permittee's application for reconsideration, or unless reasonable grounds for failure to urge such objections are set forth in the petition for review.

(b) *Permit privileges.*—If such request is filed within the required time, the permit involved shall continue in force and effect until the final order by the Commissioner, except as to such restrictions upon withdrawals or transportation as may be imposed by the district supervisor, as provided in section 182.245. (*; Sec. 3114, I. R. C.)

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SEP 21 1945

CHARLES ELWINE DOWLEY

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 51.

FOREST E. LEVER, Administrator, Etc.,

Petitioner,

vs.

A. V. ANDERSON, District Supervisor, Alcohol Tax Unit

Respondent.

**On a Writ of Certiorari to the United States Circuit Court
of Appeals for the Tenth Circuit.**

BRIEF FOR PETITIONER.

HUSTON THOMPSON,

HUGH H. OBEAR,

Counsel for Petitioner.

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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 51.

FOREST E. LEVERS, Administrator, Etc.,

Petitioner,

v.s.

A. V. ANDERSON, District Supervisor, Alcohol Tax Unit

Respondent.

On a Writ of Certiorari to the United States Circuit Court
of Appeals for the Tenth Circuit.

BRIEF FOR PETITIONER.

Upon the filing of the petition and brief in support thereof, for the writ that has been granted, the Solicitor General replied with a Memorandum in which he admitted, in substance, the correctness of the interpretation and the application of the general rule for which petitioner contends here. He, however, suggested that *probably* this case does not come under the general rule, and is to be determined by a practice, which he claims has existed under the Federal Alcohol Administration Act (hereinafter sometimes called the Act or F. A. A.) procedure, and by which he asserts petitioner should be bound.

In order that the Court may be advised of the petitioner's position with respect to the general rule and its relation to the specific case herein; it is deemed necessary to repeat much of the argument in support of the general rule and its application that was set forth in petitioner's brief in support of granting the writ.

In this brief petitioner analyzes and comments on data which the Solicitor General now desires to introduce for the first time in this case.

Opinion Below.

The opinion of the Circuit Court of Appeals (R. 457-458) is reported in 147 F (2) 547.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on the 23rd day of January, 1945 (R. 457). The petition for a rehearing was overruled on the 23rd day of February, 1945 (R. 460).

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925.

The petition for writ of certiorari was granted May 7, 1945.

Questions Presented.

1. Whether the petitioner was required as a necessary step in exhausting the administrative remedy to file a petition for reconsideration before the District Supervisor of the Alcohol Tax Unit, after decision by that official, and the entering of an order by him, nullifying petitioner's basic permit authorizing the purchase or resale at wholesale of distilled spirits and denying basic applications for wholesaler's and importer's permits, respectively.

2. Whether, under the facts of this case, the District Supervisor was justified in annulling petitioner's permit and in declining to grant the application for two additional permits.

Statement of Facts.

For approximately twenty years prior to the beginning of this proceeding Forest E. Levers and his brother Ray E. Levers, deceased, were in the business of selling and distributing distilled spirits, wine and malt beverages, covering a period before and after Prohibition, and from March 21, 1936, had a wholesaler's permit No. P-8482 under the Federal Alcohol Administration Act (Act of August 29, 1935, Ch. 814; 49 Stat. 977; 27 U. S. C. A. 201 as amended, hereinafter called the Act) and regulations thereunder until October 1, 1941, in the name of Levers Brothers (R. 153).

On October 1, 1941, Ray E. Levers died (R. 154), and upon petitioner's petition he was appointed by order of the Probate Court of Chaves County, dated October 6, 1941 (R. 166, 167) special administrator of the estate of Ray E. Levers, deceased, "... insofar as the partnership assets in the firm of Levers Brothers is concerned" (R. 166). As said special administrator he qualified by posting surety bond in the sum of \$25,000.00. He was *directed* and empowered by the Court to continue the business which *had* been known as Levers Brothers (R. 167). Thereafter, on October 10, 1941, upon application of the deceased's widow, Oran C. Dale, son-in-law of Ray E. Levers, was appointed co-administrator with petitioner (R. 168, 169).

The co-administrators applied for and were granted on December 26, 1941 (R. 170) a wholesaler's basic permit No. 13-P-37, which permit was subsequently annulled and the annulment of which is at issue herein.

Thereafter, Oran C. Dale, having been drafted into the United States Army, resigned as co-administrator and was discharged as such by the Probate Court (R. 179), and it became necessary for petitioner to apply for new permits.

Thereupon petitioner as co-partner and special administrator of the estate of Ray E. Levers applied on November 29, 1943, for wholesaler's basic permit to be designated as

13-P-66, and on the same date also applied for an importer's basic permit to be designated as 13-I-12. The aforesaid applications (Nos. 13-P-66 and 13-I-12) were applied for because of the retirement and discharge of said Oran C. Dale from the position of co-administrator (R. 171-177).

On November 5, 1943, respondent, District Supervisor, acting pursuant to Section 4 (e) of the Act, issued an order to show cause why the basic permit issued on December 26, 1941, should not be annulled (R. 146).

On December 18, 1943, pursuant to Section 4 (b), respondent issued a notice of contemplated denial of each of the two above described applications (R. 180, 191, 198).

Petitioner requested a hearing on the order to show cause why the wholesaler's basic permit issued December 26, 1941, should not be annulled and on each of the notices of contemplated denial. The hearings in the three proceedings were consolidated (R. 4-6). After the hearing, the Hearing Officer made a consolidated report containing findings of fact that petitioner had made the misrepresentations charged (R. 377-421). These findings were adopted by the District Supervisor, who then issued an order of annulment, an order denying the application for wholesalers basic permit, and an order denying the application for an importer's basic permit (R. 421-427).

Basic permit 13-P-37 was annulled on April 5, 1944, and the two applications for permits 13-P-66 and 13-I-12 were denied on the same day (R. 421, 422, 426).

By reason of the annulment of the basic permit 13-P-37 and refusal of the applications for basic permits 13-P-66 and 13-I-12 the said business was threatened with extinction.

Despite their long continuance in the aforesaid business of selling and distributing distilled spirits, neither the petitioner nor Levers Brothers nor Ray E. Levers had ever been convicted of a felony or misdemeanor under a Federal or State law, nor had a permit ever been suspended or revoked for any violation of the Federal Alcohol Administration Act or of the regulations thereunder.

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The order annulling basic permit No. 13-P-37 on April 5, 1944, was a final order (R. 421, 422, 428). No petition for reconsideration was filed with the District Supervisor.

Appeal to the Circuit Court of Appeals.

On May 18, 1944 petitioner filed his appeal as provided by Section 4 (h) of the Act, said petition for appeal stating, among other things, that "all of the points upon which petitioner relied had been presented to and urged upon the Alcohol Tax Unit" (R. 2).

The Circuit Court of Appeals declined to consider the appeal, holding in effect that the petitioner's appeal was premature because he had not filed a petition for reconsideration before the District Supervisor (R. 457).

Statute and Regulations Involved.

Applicable portions of the Federal Alcohol Administration Act (49 Stat. 977; 27 U. S. C. 201) and of the regulations involved in this case are set out in the appendix.

Specification of Errors To Be Urged.

The Circuit Court of Appeals erred:

1. In refusing to take jurisdiction of this case.
2. In holding that petitioner had not exhausted his administrative remedies.
3. In failing to hold that under the circumstances of this case petitioner had substantially complied with the provisions of Section 182.255 of the regulations.
4. In causing a penalty to be inflicted upon petitioner, through the dismissal of his petition more severe than is found in any recorded case of a similar character.
5. In dismissing the appeal.

Summary of Argument.

Point I.

The filing of a petition for reconsideration before the same officer, board, commission, or tribunal that has finally passed upon a matter is not and should not be an indispensable step in exhausting the administrative remedy. This is so because this court has so ruled (*Prendergast v. New York Telephone Company*, 262 U. S. 43). The only time when it has been held that a petition for reconsideration must be filed is when the statute relating to the administrative agency so provides.

Point II.

The attempted differentiation by the Solicitor General of the instant case from other cases, where he concedes that a petition for reconsideration is an unnecessary step before seeking judicial review, is unsound.

Likewise, the data which he proposes to submit to the court in his brief in reply to this brief will not be proper, because (a) the data is not in the nature of a public document, (b) it is not material or competent. Moreover, even if competent, it is incomplete and could not aid this court in reaching a conclusion.

Point III.

The requirements of the statute concerning judicial review were satisfied. There was no requirement under the statute governing (Federal Alcohol Administration Act) which required petitioner to file petition for reconsideration before the District Supervisor before taking an appeal to the Circuit Court of Appeals. The statute provided that an appeal may be taken by the permittee from any order annulling a basic permit. The order appealed from in this case was precisely that sort of order and every point urged upon the appellate court had been urged before the Alcohol Tax Unit.

Point IV.

Requirements of Section 182.225 of Regulation 3 are not mandatory but permissive. The regulations say within 20 days after an order is made by the District Supervisor the permittee *may* file application for reconsideration. The words "may file" in this situation mean precisely what they say and not "must file".

Point V.

Other cases coming before the Federal courts involving the revocation of permits are analyzed and set forth and indicate that the Circuit Court of Appeals should have taken jurisdiction and reversed the action of the District Supervisor because the record in the instant case shows the order of the Supervisor to be unreasonable, arbitrary and capricious in that the application was made by officers of the court who were under the control of the court, whose records are clear of crime and misdemeanor and whose actions, if any are wrong, could have been corrected during a suspension period.

Argument.

Point I.

The filing of a petition for reconsideration before the same officer, board, commission, or tribunal that has finally passed upon a matter is not and should not be an indispensable step in exhausting the administrative remedy.

This Court has held that application to a commission for a rehearing is not a necessary prerequisite to the bringing of suit.

In *Prendergast v. New York Telephone Company* (*supra*) the District Court of the United States for the Southern District of New York granted an injunction against the enforcement of telephone rates established by the Public Service Commission of New York.

One of the defenses interposed by the Telephone Company was that the bill was prematurely filed because no petition for a rehearing had been made. This Court rejected this contention, saying:

"Upon the making by the commission of the orders in question the proceedings had reached the judicial stage entitling the company to resort to the court for relief. *Bacon v. Rutland R. Co.* 232 U. S. 134, 137, 58 L. Ed. 538, 539, 34 Sup. Ct. Rep. 283, distinguishing *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210, 229, 53 L. Ed. 150, 160, 29 Sup. Ct. Rep. 67, in which an appeal had not been taken to the highest tribunal vested with the final legislative authority of the state. Here the commission is vested with the final legislative authority of the state in the rate-making process; the authority exercised by the state courts upon a review by certiorari (*People ex rel. Central Park, N & E River R. Co. v. Willcox*, 194 N. Y. 383, 87 N. E. 517), being purely judicial and having no legislative character (*Laws New York 1920*, chap. 925, § 1304, 1305, pp. 437, 438).

"*It was not necessary that the company should apply to the commission for a rehearing before resorting to the court.* While, under the Public Service Commission Law, any person interested in an order of the commission has the right to apply for a rehearing, the commission is not required to grant such rehearing unless, in its judgment, sufficient reason therefor appear; the application for the rehearing does not excuse compliance with the order or its enforcement except as the commission may direct; and any change made in the original order upon the rehearing does not affect the enforcement of any right arising from the original order (§ 22). *As the law does not require an application for a rehearing to be made, and its granting is entirely within the discretion of the commission, we see no reason for requiring it to be made as a condition precedent to the bringing of a suit to enjoin the enforcement of the order.* See, by analogy, *Hollis v. Kutz*, 255 U. S. 452, 454, 65 L. Ed. 727, 728, 41 Sup. Ct. Rep. 371; *Re Arkansas Rate Cases* (C. C.) 187 Fed. 290, 306; *Atlantic Coast Line R. Co. v. Interstate Commerce Commission* (Com. Ct.) 194 Fed. 449, 452; *Baltimore*

& O. R. Co. v. Railroad Commission (C. C.) 196 Fed. 690, 693, 699 and Chicago R. Co. v. Illinois Commerce Commission, 297 U.S. 277, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

Land & Water Co. v. Railroad Commission (D. C.) P. U. R. 1916E, 437, 227 Fed. 708, the statute specifically provided that no cause of action should accrue in any court out of any order of the commission unless an application for a rehearing had been made. Here the commission did not suggest in its answer that it perceived any ground upon which it would have granted a rehearing if an application had been made; but, on the contrary, maintained the correctness of its orders in all respects. Manifestly, under such circumstances, the injunction should not have been denied merely because application had not been made to the commission for a rehearing." (Italics ours.)

That petitions for rehearing or reconsideration are *not now and should not be essential prerequisites to filing suit* is unquestionably the view of the organized bar of the United States.

In the American Bar Association's Legislative Proposal on Federal Administrative Procedure (1944) through its Special Committee on Administrative Law we find the following provisions with respect to Judicial Review:

"Section 9 (d) *Reviewable acts*.—Any rule shall be reviewable as provided in this section upon its judicial or administrative application or threatened application to any person, situation, or subject; and, whether or not declaratory or negative in form or substance, any administrative act or order directing action, assessing penalties, prohibiting conduct, affecting rights or property, or denying in whole or in part claimed rights, remedies, privileges, permissions, moneys, or benefits under the Constitution, Statutes, or other law of the land, except in matters expressly committed by law to absolute executive discretion, shall be subject to review pursuant to this section: *Provided, however, that only final actions, rules or orders, or those for which there is no other adequate judicial remedy (including the neglect, failure, or refusal of any*

agency to act upon any application for a rule, order, permission, or the amendment or modification thereof, within the time prescribed by law or within a reasonable time), shall be subject to such review; any preliminary or intermediate act or order not directly reviewable shall be subject to review upon the review of final acts, rules, or orders; *and any action, rule, or order shall be final for purposes of the review guaranteed by this section notwithstanding that no petition for rehearing, reconsideration, reopening or declaratory order has been presented to or ruled upon by the agency involved.*" (Italics ours.)

and in the explanatory statement (page 7) referring to Section 9 (Judicial Review) the monograph says that it

"restates existing rights of judicial review, with a specification of the categories of questions so reviewable." (Italics ours.)

In the various Law Review notes and articles where the subject is most frequently treated, we find a like accord as to existing law.

In a note on "Administrative Action as a Prerequisite of Judicial Relief"—35 Columbia Law Review, 240, 241 (1935),

"In applying the exhaustion doctrine, it is important to determine how far a litigant must proceed in invoking the administrative remedy."

"The next step in the administrative process after the hearing is the petition for rehearing before the same board."

"It would seem proper that one who has applied for a rehearing should be required to wait until his petition has been passed upon by the board. . . ."

"But if no such application has been made the additional delay and the apparent futility of the rehearing have persuaded the courts, except where constrained by statute, to dispense with it."

In Note 51 Harvard Law Review, 1251, 1252, "Primary Jurisdiction—Effect of Administrative Remedies on the Jurisdiction of the Courts" it is said:

"The question arises as to when the administrative remedy has been pursued far enough. * * *"

"Usually the courts do not require application to the Commission for a rehearing before suit may be maintained."

"But if the statutes *expressly* require a petition for rehearing before a cause of action arises from a commission order the courts will give full effect thereto. Citing: Palermo Land & Water Co. v. R. R. Com. 227 Fed. 708 (N. D. Calif. 1915); McArdle v. Board of Commrs., 195 Ind. 281 (1924)"

In the instant case the statute does not require a petition for a reconsideration. The Act is silent, while the Regulation under it is expressed in the permissive language of "may."

"Exhaustion of Administrative Remedies" by Raoul Berger, 48 Yale Law Journal, 981, 988:

"The question of whether an application for an administrative rehearing is a necessary element of exhaustion and whether exhaustion is required where it is anticipated that administrative action will be unfavorable have likewise given rise to uncertainty. In an early case, Vandalia Railroad Company v. Public Service Commission, 242 U. S. 255, 260 (1916) which involved an Indiana statute declaring that 'the Commission shall have authority' to grant a rehearing, the Supreme Court held a failure to apply for an administrative rehearing precluded resort to the courts. A few years later in Prendergast v. N. Y. Tel. Co., 262 U. S. 43, 48 (1923) the Supreme Court, making no mention of the Vandalia case declared that exhaustion was unnecessary where the statute did not *require* an application for rehearing. As a result, courts have demanded an application for an administrative rehearing as a preliminary to judicial relief *only where the statute required such application.*"

In a Note in California Law Review, Vol. 29, pp. 515-516:

"Courts are unanimous in requiring exhaustion as a general proposition, but there is much difference in judicial opinion as to when the requirement has been satisfied and when it will be omitted. When a hearing before an administrative tribunal has been provided, a mere oral protest thereto will not satisfy the requirement and all courts require a litigant to take an administrative appeal but there is some doubt as to whether a *petition for a rehearing* before the administrative board is essential to exhaust the remedy." "Where a *statute* provides for a rehearing and is construed to be mandatory rather than permissive it is universally held that one must be applied for or the remedy has not been exhausted. On the other hand, where no *statutory* provision is made therefor, the requirement for a rehearing has been dispensed with on the ground that it would involve additional delay and would probably be futile anyway."

The cases cited in the Circuit Court of Appeals opinion were vastly different from the present case.

While *Peoria Braumeister Company v. Yellowley*, 7 Cir. 123 F. (2) 637, 640; and *Leebern v. United States*, 5th Cir. 124 F. (2) 505, 507 (both being cases under this Act) held that the petitioner, in those cases, had not exhausted his administrative remedy, both cases were on appeal *prior to the amendment* of the regulations which did away with the necessity of an appeal to the Deputy Commissioner, and the circumstances differed greatly, as will hereinafter be shown. When this appeal was taken Section 182.257 of Regulations 3 expressly provided that "appeal to the Commissioner is not required."

The *Gilchrist* case (*Gilchrist v. Interborough Company* (279 U. S. 159)), was simply one in which petitioner had filed a bill in court *before* the Commission had entered its order. It is pointed out by the court on page 206,

"Prior to February 14, 1928, the Commission took no official action. But it appears that counsel for the

Commission and the Mayor express the opinion that no relief should or would be granted, and perhaps used some threatening and ill-advised language. * * * At 9:20 a.m. February 14, 1928, the original bill now before us was filed. * * * Later during the same morning the Transit Commission entered an order which denied its authority to grant the new rate. * * *

And at pages 208-209 the Court said:

"* * * the Interborough Company could not have resorted to a Federal court without first applying to the Commission as prescribed by the statute; and having made such an application, it could not defeat orderly action by alleging an *intent* to deny the relief sought." (Italics supplied.)

Clearly the *Gilchrist* case was one in which an order had not become *final* and is not in point.

The *Red River Broadcasting* case (*Red River Broadcasting Company v. Federal Communications Commission*, Baxter intervenor), United States Court of Appeals for the District of Columbia, 98 F. (2d) 282, was one in which the Red River Broadcasting Company, which took the appeal to the Circuit Court of Appeals, never attempted to become a party to the proceedings before the Communications Commission. It sought for the *first time to enter the proceedings by the appeal*, and as Judge Miller pointed out, the Communications Act clearly indicated that interested and aggrieved persons *should first appear* before the Commission and there assert their rights. It is not in point.

NO APPEAL TO THE DEPUTY COMMISSIONER WAS REQUIRED

The Circuit Court of Appeals said (R. 458):

"It is true that an appeal to the Deputy Commissioner of Internal Revenue may no longer be a condition precedent to judicial review in view of the amended regulation, Section 182-257, which in part provides:

"Appeal to the Commissioner is not required." * * *

"But the amended regulations do not do away with

application for reconsideration, an administrative remedy not availed of by the petitioner. . . .
(Italics supplied.)

It thus seems clear that the Circuit Court of Appeals based its opinion upon the claimed failure of petitioner to file a petition for reconsideration, and in so holding, its ruling was contrary to the applicable decision of this court in *Prendergast v. New York Telephone Company, supra*, and to the proper rule as to judicial review in administrative proceedings.

Point II.

Reply to memorandum and data of Solicitor General on subject of petition for reconsideration.

The Solicitor General's Memorandum, in reply to the petition and brief for a writ of certiorari, has conceded that if this were a case of the equivalent of an ordinary petition for rehearing, "The order was judicially reviewable despite the absence of an application and that the decision below was incorrect."

He, however, contends that the application, here, performs a more important function. He says that it enables a party to reargue his case fully, both orally and in writing and also automatically stays the operation of the Order. It is his position that these factors differentiate an application under these regulations from the ordinary petition for a rehearing. Hence, in the instant case he argues that it is *probably* not unreasonable to require a person aggrieved by the Order of the District Supervisor to avail himself of this procedure before seeking judicial relief.

Apparently the Solicitor General does not have any too great faith in this differentiation and the position he takes with respect to it, for he says in his conclusion (Memorandum p. 15) that, "Whether a rehearing must be sought under those regulations *probably* does not present a question warranting review by this Court." (Emphasis ours.)

The refinement of reasoning by which the Solicitor General sets up an attempted differentiation and seeks to make it the basis for a defense is not simply an attempt to split a hair but an atom in the hair.

Counsel have been courteously advised by the Solicitor General that he proposes, in answer to their brief, to submit certain data which he has obtained from the fifteen District Supervisors' Offices of the Alcohol Administration in the United States, relating to the action taken upon applications for reconsideration by the respective Supervisors. This document appears to contain data that is not of a public nature, is now being introduced for the first time, and on its face contains information that would not have been possible for petitioner to have obtained in time to be advised by it.

It becomes necessary to consider the validity of this offering by the Solicitor General in support of his position that procedure before District Supervisors is determined differently from that which he admits is recognized as proper before other Administrative Tribunals.

THE DATA SUBMITTED IS NOT IN THE NATURE OF A PUBLIC DOCUMENT.

The compilation of records from the District Supervisors' Offices has no resemblance to that character of public document or information of which a party is presumed to have notice. It is not in any way referred to in the Federal Register. (U.S.C.A., Title 44, Chapter 8B, Sections 301-305, inclusive.)

In a letter dated July 16, 1945 from the Office of the Solicitor General to petitioner's counsel, accompanying this data, Appendix "C", it is stated, in the concluding paragraph, that "the tabulation is based upon decisions of the District Supervisors which are public in the sense that they are not at all confidential, but are not published or distributed generally." It is respectfully submitted that data of which a lawyer representing his

client would be presumed to have knowledge, does not become public simply because it is not confidential. Public documents must have been printed and circulated to some part of the public. (Federal Register, supra.) Inter-office facts and figures are not within this classification. It is not shown here that the data was published or distributed generally, or even inter-office. In fact, the Solicitor General's letter indicates quite clearly that it became necessary for him to have the data looked up and tabulated, and this for the first time by anyone.

The rule with respect to an application for reconsideration required that the petitioner should apply for such within twenty days. To hold now that this data could in any way bind petitioner because of its public nature would imply that an attorney in Roswell, New Mexico, could gather and compile within twenty days all the data which the Solicitor General obtained from fifteen different Supervisors' Districts, and this during one of the most hectic business periods in the life of the F. A. A. It would be interesting to know how long it took the Solicitor General himself, with all the authority and equipment of his high office, to obtain the data with which he now confronts petitioner, and upon which he proposes to base his argument, for separating the case against this particular individual from the general rule which, he admits, does not require an application for reconsideration as a prerequisite for appeal.

It would seem to be beyond a peradventure that petitioner could not and should not be bound by such data at this late date, it apparently never having been compiled until after the petition for the writ was granted, its contents being entirely unknown to petitioner or his counsel, and not having any of the attributes of a public document.

THE DATA COMPILED IS NOT MATERIAL
OR COMPETENT.

The data is not relevant to the issues for the reason that Section 182.255 of A. T. U. Regulations No. 3 does not require the petitioner to file an application for reconsideration. Under the F. A. A. Act there is no such requirement, while the language of the Regulation uses the word "may" as permissive language, leaving it to the petitioner's judgment or discretion as to whether he shall file a petition for reconsideration. In the Solicitor General's Memorandum he states that "most applications for rehearing which raise no question not previously considered, waste the time both of the litigant and the tribunal, whether it be judicial or administrative."

The record (page 2) shows that the petition in the court below stated unequivocally that all the matters presented to the court had been presented to the Supervisor. Hence, petitioner's counsel in determining whether he should go straight to the Circuit Court of Appeals, or apply for a reconsideration, asked himself the very question that the Solicitor General's statement would call for, namely, there being no new evidence to be offered and no new question to be raised, why waste the time of both the litigant and the tribunal by applying for a reconsideration.

The Solicitor General's Memorandum bases his argument for separating this particular case from the general rule on the supposition that the provision for reconsideration is a protection to the petitioner. (Memorandum, pages 13 and 14.) But why compel the petitioner to seek this protection if he is not presenting any new points, has been overruled on all of the old ones, and does not request further protection from the Supervisor? It is at this point that petitioner is unable to follow the reasoning of the Solicitor General in his asserted differentiation, particularly when the language of the regulation is permissive and the statute does not require him to file an application for reconsideration.

ANALYSIS AND APPLICATION OF THE
DATA COMPILED.

Even if the data compiled were germane and admissible, it is wholly incomplete and could serve no purpose in assisting this court to any conclusion.

It does not indicate in any way the total number of rulings and the types and facts of cases on which rulings were made by the Supervisor of the District in which this case arises. It therefore fails from a percentage angle. Petitioner has just been informed that there never had been any application for a reconsideration made to this particular supervisor, prior to the instant case, and therefore there was no practice or precedent in this District.

The data does not show during what period of time the 54 cases referred to arose and whether some of them were made when appeal could be taken to the Deputy Commissioner, or only to the Supervisor; or how many arose prior or subsequent to the instant case.

The record in this case shows that petitioner was not appealing on the grounds of improper evidence, or change of evidence, or the desire to introduce new evidence. Yet the data compiled and submitted (Appendix "C") indicates under 2(a) and (c) that a refusal to grant the application was made on the ground that "the application did not disclose any new matter not previously argued." That is identical with the situation in the instant case.

It may well be asked what help it would have been to the petitioner to have all the data here compiled if he could not make his application for reconsideration on any one of the three grounds here named in the Solicitor General's compilation. The data does not indicate the modifications, or the reasons for modifications, or the facts upon which the modifications were based. None of the cases referred to give any indication of why they were allowed or disallowed, so that in so far as informing this court of a practice is concerned, they would seem to be worthless.

There is nothing to show whether the Supervisor at Denver would have granted the petitioner permission to file a written brief and have oral argument, had he applied for a reconsideration. If, as was the fact, petitioner would not have applied for a reconsideration on the basis of desiring to present new evidence or challenging the truth of the evidence introduced, it is a fair presumption that he would not have been allowed the filing of a brief, or oral argument, or a reconsideration.

In conclusion it is submitted that the data is wholly irrelevant, immaterial and incompetent as evidence of a practice that would be binding upon petitioner.

Further, the Solicitor General having already admitted that the general rule claimed by petitioner is sound, it is impossible to separate the application of the general rule from the instant case, in view of the language of the Act, the regulation in question, and the failure to show any interpretation that would be binding on petitioner.

Point III.

The requirements of the statute concerning judicial review were satisfied.

There was no requirement under the statute that petitioner file a petition for reconsideration before taking an appeal to the Circuit Court of Appeals.

The requirements of the statute are merely that:

"An appeal may be taken by the permittee * * * from any order * * * annulling a basic permit.

"No objection to the order * * * shall be considered by the Court unless such objection shall have been urged before the Administrator. * * *"

The order appealed from was precisely that sort of order. It was a final order. Every point urged upon the Appellate Court had been urged upon the Alcohol Tax Unit (R. 2). Nothing new was offered in the Circuit Court of Appeals that was not urged upon the District Supervisor.

Point IV.

The requirements of Section 182.255 of Regulation 3, if applicable to Petitioner's case, are not mandatory, but permissive.

The regulation in question provides:

"Within 20 days after an order is made by the Commissioner or district supervisor *revoking* a basic permit, the permittee *may* file an application with such Commissioner or district supervisor, for a reconsideration of such order, on one or more of the following grounds:

- (1) The order is contrary to law, or
- (2) Is not supported by the evidence, or
- (3) Because of newly discovered evidence which the permittee, with due diligence, was unable to produce at the hearing, etc. * * *

It is submitted that the words "*may* file" in this situation mean precisely what they say—"may file" and not "*must* file."

It is nothing more, in effect, than the same privilege permitted any litigant in court to file a motion for a new trial in a District Court before appealing to a Circuit Court of Appeals, or to file a petition for rehearing in a Circuit Court of Appeals before applying to this Court for a petition for certiorari.

The permissive nature of the petition for reconsideration is clearly indicated in the monograph of the Attorney General's Committee in Administrative Procedure in Government Agencies (1940) "Part 5 Federal Alcohol Administration", page 28, where it is said:

"Petitions for reconsideration, though permissible under the rules of practice (55),¹ have rarely been filed, and then only in cases in which the parties have discovered new evidence on the basis of which reopening of

¹ The footnote reference (55) in the above quotation is to Regulations No. 1 (1935) art. IV, sec. 5. That regulation was in fact stronger than Sec. 182.255.

the hearing was requested. These petitions have always been granted and have resulted in the designation of the matter for further hearing."

It is submitted that regulation 182.255 did not require petitioner to file a petition for reconsideration.

Point V.

The facts in the instant case present a situation calling for review of the record by the Circuit Court of Appeals and a correction of the action by the District Supervisor.

In *Pottsville Broadcasting Company v. Federal Communications Commission*, 98 F. (2)-288, the Company applied for a permit to construct a broadcasting station in Pottsville, Pennsylvania. Charles D. Drayton, in Washington, D.C., was the President of the Company and potentially the heaviest stockholder.

The application was denied by the Pennsylvania Securities Commission, which held that there was not a sufficient showing of financial ability in the applicant, and that Drayton, not a resident of Pottsville, was not familiar with the needs of the listening audience in that region. The Court (Groner, C. J.) sent the case back to the Commission for reconsideration and said:

"If the Commission should be of opinion, upon reconsideration, that the application ought not to be granted because a stranger to Pottsville has the controlling financial interest in the applicant corporation, and should announce a policy with relation to the grant of local station licenses, confining them to local people, we should not suggest the substitution of another view. But in saying this we are not unmindful of the obvious fact that such a rule might seriously hamper the development of backward and outlying areas."

In *Atlanta Beer Distributing Company, Inc. v. Alexander, Federal Alcohol Administrator*, 93 F. (2) 11, petitioner applied for a permit to engage in the business of purchasing

at wholesale wine and malted liquors, etc. The hearing officer recommended denial of the application. Exceptions were filed and overruled by the Administrator.

The President-Treasurer of the Corporation had a criminal record consisting of five convictions in State and Federal courts. It was on this ground that the Administrator denied the application for a permit, saying "that the corporation was not likely to maintain its operations in conformity to federal law." The majority opinion of the Court stated that:

"No objection to the order shall be considered by the court unless it shall have been urged before the Administrator, or *there were reasonable grounds for failure so to do.*" (Italics supplied.)

In contrast to the instant case the question was (1) not the consideration of the issuance of basic permit No. 13-P-37, but the *annulment* of this permit issued approximately three years before; (2) applicant and his associates had never been convicted of a felony or misdemeanor in a Federal or State court nor had had a suspension of a license; (3) petitioner was not asking the Court to upset the findings of fact, as in the case of *Atlanta Beer Distributing Company, Inc.*, supra.

On the other hand, the District Supervisor was acting upon a mistake of law, both arbitrarily and capriciously to the prejudice of petitioner, since the facts were sufficient to admit petitioner to read the rules as permissive and the case should have been returned to the Supervisor.

Judge Hutcheson in his dissenting opinion uttered words that could well be considered in the instant case, when he said (p. 13):

"The result of the action of the Administrator, therefore, in, as appellant claims, arbitrarily refusing a permit is not to prevent applicant's entering into new business, *but it is to take from it and destroy the established business and capital which it has already built up* . . . I think that under the facts disclosed,

the Administrator could not deny the permit except upon the clearest showing that one of the statutory grounds for refusing it existed." (*Italics supplied.*)

In the instant case the Circuit Court of Appeals apparently made its decision solely on the technical ground that the petitioner failed to ask for a reconsideration.

In *Arrow Distilleries v. Alexander*, 109 F. (2) 397, the petitioner's license was suspended because (1) he had falsified certain records which were to be kept by the holders of basic permits; (2) misbranded bottles of whiskey by misdating their age; (3) sold spirits in bottles in interstate commerce for which the petitioner had received no certificate of label approval. Note that the permits were *suspended* but *not annulled*, so that the petitioner had the opportunity of rectifying any violations without having its business and assets destroyed.

In contrast, in the instant case there is no substantial testimony showing that after the granting of basic permit No. 13-P-37 to officers of a court they knowingly and intentionally violated the law or regulations. The acts for which they were charged during that period such as "exclusive outlet" control and "tied house", inducements as in U. S. C. A. Section 205(a) and (b) respectively, were certainly not as offensive to the law as were those in the above case. Nevertheless, the Supervisor did not annul the permit.

In the case of the *Middlesboro Liquor and Wine Company, Inc. v. Berkshire*, 133 F. (2) 39, the facts were that a wholesaler's basic permit was issued to appellant. Four years later it was annulled, and appeal taken to the U. S. Court of Appeals for the District of Columbia. The appellant's permit was procured through fraud and concealment and misrepresentation of a material fact in that the true interest of Floyd Ball, the principal stockholder, member of its Board of Directors and Secretary-Treasurer was concealed, he being a person with a criminal record, who had not divested himself of an interest in the Company.

In arriving at its decision the Court went very thoroughly into the record.

In the opinion, Justice Miller made a distinction between annulment proceedings and those for suspension or revocation. Referring to the limitations of Section 4(i) of the Act he said:

"However, those limitations have no relation to annulment proceedings. They are specifically confined to proceedings for suspension or revocation. This is even more clearly shown by reference to Section 4(e) in which the three distinct types of disciplinary action are enumerated and defined. An entirely different situation exists when it appears that a permit has been procured by fraud, misrepresentation or concealment than when a permit has been properly procured but has been improperly used. Proceedings to suspend or revoke are concerned with nonuser or *misuser after the granting of the permit.*" (Italics supplied.)

In contrast, in the instant case, (1) there was no criminal record to consider; (2) the application for Permit No. 13-P-37 was made by the permittees, officers of a Court; (3) there was no substantial evidence that could be applied to these officers, not only because Mr. Ray E. Levers, against whom most of the evidence was given, was dead, but because the applicants were either new or had completely changed their position and approached the Unit as officers of the Court, ordered by a Court to carry on the business. Therefore, the District Supervisor should in no sense have considered the case as one calling for annulment but, if at all, following the distinction made by Justice Miller, one of *misuser after the granting of the permit.* In not considering the record the court apparently did not review the transcript, which would have illuminated all these points.

In the case of *Monarch Distributing Company v. Alexander, et al.*, 119 F. (2) 953, the question was the refusal to grant petitioner a basic permit. At the hearing on the application, subsequent to the date of the original petition

but prior to final amendment thereof, it appeared that petitioner and certain of its successive Presidents had been convicted in the U. S. District Courts of felonies and misdemeanors. The only question involved was whether these convictions, secured after the date of filing the original petition, were a bar to the issuance of the permit, in view of the fact that the statute prohibits permits only to persons convicted "within five years prior to date of application." The court held that it was immaterial when the conviction occurred so long as it was within five years.

In contrast, in the instant case (1) the basic permit had already been issued, so the value of a going business was involved; (2) there was no question of criminal records; (3) applicants were in a totally different position from those in the above case and, if any correction of their acts was needed, it could have been easily handled under a suspension and not an annulment of a business that was within the active jurisdiction, control and supervision of a Court; (4) that to annul the business under such circumstances would take the case completely out from under any precedent that might be set up in the *Monarch Distributing Company case, supra*.

In the case of *Commissioner of Internal Revenue v. Aluminum Company*, 142 F. (2) 663, the Circuit Court of Appeals held that a Treasury Regulation which exceeds legislative intent of the Act, which it purports to interpret for administrative purposes, is of no effect.

The Federal Alcohol Administration Act provides for annulment but does not set up administrative procedure therein. The Federal Alcohol Unit, however, promulgated Section 182.255 for procedural purposes. This regulation provided for an application for reconsideration of an order to the author of the order, to wit, the District Supervisor. But the courts have, in reality, suggested in their respective opinions the conditions on which it would be unnecessary to ask for reconsideration from the same official, before a hearing in the Circuit Court of Appeals, as for example, (1)

where no new evidence was offered in order to have the findings set aside, changed or modified; (2) no claim that a petitioner has been misled by change in rules; (3) nor that he did not have a fair trial so far as being permitted to introduce evidence; or (4) because petitioner was not seeking to change a policy of the department. In the instant case none of these grounds was asserted.

In order to interpret the regulation as mandatory, the burden was on the respondent to show the absence of any or all of the above conditions. In their absence respondent acted arbitrarily and capriciously.

In the case of *Peoria Braumeister Company v. Yellowley, supra*, the basic permit to engage in sale and distribution of intoxicating liquors was *suspended*—not annulled. The charge was falsifying records and failure to keep records at its place of business. The case does not state in what respect petitioner falsified.

The position of the Government was that the respondent had no right to appeal to the court until it had exhausted its remedies before the Commissioner and the Department, as provided by the regulations.

Judge Minton of the 7th Circuit said that the petitioner had not exhausted its remedy until it asked for a reconsideration.

In contrast the same charge is made in the instant case as in the above case, to wit, that the petitioner falsified its records. Yet the Commissioner on such a charge did not annul but only suspended the permit and thus gave the applicant an opportunity of correcting any mistakes or wrongs and not destroying the business of the petitioner outright.

In the case of *Malloy & Company v. Berkshire, et al.* (2nd Circuit) 143 F. (2) 218, the charge was that the dealer's basic permit was procured by fraud and misrepresentation and concealment of material facts that justified annulling the permit. A questionnaire required the Corporation to state the amount of capital stock, addresses of directors,

officers, stockholders, etc., whether the applicant was a successor or under substantially the same control or financed by substantially the same interests; the source of funds invested, the name and addresses of persons who held or were expected to hold a substantial interest.

Four of the stockholders who were officers and directors had been engaged in bootlegging during the prohibition years. The respectable names of Thomas J. Malloy, President, and one Bomzon, were being used as a front. Neither one had ever actually put any money into the Corporation, whereas four bootleggers were the real financiers.

The Court held that the hearing officer had ample justification for holding that there were concealments and misrepresentations that were material, because the money supplied and the principals had been connected with the bootleg business and that this had not been disclosed. The Court further said that the Administrator had the right to know with whom he was dealing.

In contrast in the instant case, the Alcohol Tax Unit knew that those applying for the permit were officers of the Court. Neither they nor their predecessors had had any bootlegging record nor had been found guilty of a felony or misdemeanor either under the Federal or State laws.

In *Mallory Coal Company v. National Bituminous Coal Commission*, 99 F. (2) 399, Mr. Justice Miller said (p. 402):

"Several tests have been used by the courts to determine whether particular orders (of Commissions) were reviewable under similar provisions in other statutes." (Parentheses ours.)

Summing up the tests as to whether an order is final and it is time for judicial review, the Court said:

"If the order in the particular case is definitive rather than preliminary or procedural; if the order operates particularly upon the person seeking review, rather than upon the world generally or upon a large group of interested persons; if the order was entered in a proceeding, adversary in character, after notice

given, with a hearing at which witnesses were examined and points of law argued, and in which findings of fact were made; if a petition for rehearing was filed urging, upon the Commission the objection to the order now urged for the consideration of the Court; each of these circumstances—and more particularly all of them together—may indicate that the administrative remedy has been exhausted and that it is time for judicial review. Until that time comes, the matter should remain in the control of the administrative agency."

Any one of the first three conditions laid down by the court was sufficient to make the order appealable. All three were present in the instant case. Hence the order which the District Supervisor entered in the instant case comes within the definition laid down by Mr. Justice Miller as final and appealable.

In the case of *Straus v. Berkshire*, 132 F. (2) 530, the question was whether the Deputy Commissioner of Internal Revenue had the authority to *suspend* the permit for a period of ninety days. The permittee asserted (1) that the amount of the suspension was too great for the offense, (2) that the suspension for three months amounted to a revocation of the permit:

Permittee had failed to present any basis in the record for showing that the suspension was unreasonable, arbitrary and capricious. Nevertheless, the permittee sought to have the case sent back to the administrative officer in order to introduce evidence to show that the suspension amounted to revocation.

In contrast the instant case (1) calls for complete annulment and not suspension; (2) there is no expressed desire to offer any evidence to change the record; (3) the annulment in the instant case would mean complete annihilation of the business; (4) the record in the instant case does, under the circumstances, show the order to be unreasonable, arbitrary and capricious in that the application was made by officers of the court who were under the control of the court, whose record was clear of crime or misdemeanor and whose

actions, if in any way wrong, could have been corrected during a suspension period; all of which was evident from the record.

In the case of *Leebern v. United States, supra*, the facts were that the petitioner violated the provisions of Section 5 (b) of the Act by furnishing money to retail liquor dealers to buy licenses, endorsing and guaranteeing their notes, acquiring and holding an interest in their licenses, acquiring an interest in real and personal property owned, occupied and used by them in the conduct of their business, furnishing money, renting and selling them equipment, fixtures, supplies, etc., all of which was done to prevent other persons from selling to these retailers. For these violations the permit was suspended for *only* sixty days. The court held that:

"It functions as a tribunal of last resort set up in the statute itself for correction of errors of law committed and not corrected, in the course of the administrative procedure."

In contrast, let us assume in the instant case, that the transcript shows a case as strongly and frequently violative of the law as in the *Leebern* case. Nevertheless, the District Supervisor did not annul the permit but only suspended it for sixty days.

Furthermore, the strong intimation in the *Leebern* case is that the appeal was frivolous and groundless. The petitioner had admitted that the evidence showed, and the admissions of petitioner established, that he did the acts with the intent on his part to influence dealers to buy their liquors from him, to the partial or whole exclusion of liquors sold by others. Certainly no such contention can be read into the record and transcript in the instant case.

Under the *Leebern* case there would be no point in the Circuit Court of Appeals going into the record, as the petition admitted all the charges. But in contrast, in the record in the instant case there is no such admission on the part of

the petitioner that under Permit No. 13-P-37 he admitted all or any of the charges upon which the findings were based. The court said in the *Leebern* case that:

"The vital consideration in such procedures as the one in question here, is the furnishing of a fair, just, and an adequate administrative procedure, which will preserve the rights of the permittee against arbitrary and unlawful action with a minimum of resort to court review."

Such language is applicable to the situation in the instant case. Hence, we maintain that the court in the instant case was confronted with an entirely different situation and one in which it is respectfully suggested the record should have been considered.

Conclusion.

It is respectfully submitted, in the light of the Act, the Regulation in question, and the cases heretofore analyzed, where a final order is issued by a District Supervisor, and the petitioner is not seeking review of a basic permit to be issued, but one long since issued, that a reviewing court should consider the following factors: (1) that the applicant was well and officially known to the A. T. U.; (2) that the permittee or his associates had not been convicted of a crime either under a Federal or State law; (3) that neither he nor his associates had had a permit suspended; (4) that the permittee was not desiring to offer evidence to have the evidence changed; (5) that petitioner was not claiming that he was misled by a change in the requirement; (6) nor that he did not have a fair trial in so far as being permitted to introduce evidence was concerned; (7) nor that he was not seeking to change a policy of the department; but (8) that the rule prescribing procedure for a reconsideration in this case used the permissive word "*may*" and not the mandatory words "*shall*" or "*must*."

Under such conditions it is respectfully submitted that permittee and counsel had the right to read the Regulation

as permissive and should not have been required to apply for a rehearing before the same officer who issued the order.

It is further submitted that the Circuit Court of Appeals should have considered the record and taken the aforesaid matters into consideration and should not have refused to grant an appeal, thereby utterly destroying a business that was under the control and supervision of a State Court.

Finally, it is respectfully submitted since there was no provision of the Act *requiring* the filing of a petition for reconsideration, the conclusion of the Circuit Court of Appeals that such a petition was an indispensable step in exhausting the administrative process was a grievous error and one which will tend to great confusion and injustice in judicial review of administrative orders unless corrected by this Court.

Respectfully submitted, ,

HUSTON THOMPSON,
HUGH H. OBEAR,
Counsel for Petitioner.

APPENDIX A.**The Federal Alcohol Administration Act.**

The following provisions of the Federal Alcohol Administration Act (Act of August 29, 1935, ch. 814, 49 Stat., 977 ff; 27 U. S. C. A., 201 ff) as amended and in effect on January 1, 1941, are those having a bearing upon this petition.

Section 4 (h).

“An appeal may be taken by the permittee or applicant for a permit from any order of the Administrator denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Administrator, or upon any officer designated by him for that purpose, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. The finding of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administra-

tor and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Administrator shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall, unless specifically ordered by the court to the contrary, operate as a stay of the Administrator's order.

APPENDIX B.

Regulations 3 of Bureau of Internal Revenue.

Sec. 182.255 Reconsideration of Order Revoking Permit—(a) *Time for filing application.*—Within 20 days after an order is made by the Commissioner or district supervisor revoking a basic permit, the permittee may file an application with such Commissioner or district supervisor, for a reconsideration of such order, on one or more of the following grounds:

- (1) The order is contrary to law, or
- (2) Is not supported by the evidence, or
- (3) Because of newly discovered evidence which the Committee, with due diligence, was unable to produce at the hearing.

If the application is based on grounds (1) or (2), the permittee shall specify therein, by reference to the record, in what respects the order is contrary to law or is not supported by the evidence, as the case may be. If the application is based on ground (3), the permittee shall summarize therein the newly discovered evidence and set forth why he was unable to produce such evidence prior to the closing of the record.

(b) *Time of hearing.*—The Commissioner or district supervisor, with whom such application is filed, may hear the application on a date and at a place to be fixed by him. The Commissioner or district supervisor, as the case may be, after hearing such application, may either affirm the order of revocation previously made, or may vacate and set aside such order and dismiss the proceedings or order a new hearing of the evidence before a designated hearing officer.

(c) *Permit privileges.*—During the period above provided for filing application for reconsideration, and until final order is duly made after such reconsideration, if such application is filed within the time provided therefor, the permit involved shall continue in force and effect, except as to restrictions on withdrawals or transportation as may be ordered by the Commissioner or district supervisor, as provided in section 182.245. (*; Secs. 3114; 3121 (b), 3170, I. R. C.) Sec. 182.257 Appeal to the Commissioner.—Appeal to the Commissioner is not required. However, the Commissioner may, in his discretion, in order to insure uniformity of administrative action, entertain an appeal, after review and reconsideration as provided in section 182.255, from an order of revocation of a basic permit by a district supervisor, if filed with the Commissioner within 10 days of the date of the final order.

(a) *Petition.*—The petition for review must set forth facts tending to show action of an arbitrary nature, or of a proceeding and action contrary to law or regulations. No objection to the final order of the district supervisor will be considered by the Commissioners unless such objection was urged before the district supervisor in the permittee's application for reconsideration, or unless reasonable grounds for failure to urge such objections are set forth in the petition for review.

(b) *Permit privileges.*—If such request is filed within the required time, the permit involved shall continue in force and effect until the final order by the Commissioner, except as to such restrictions upon withdrawals or transportation as may be imposed by the district supervisor, as provided in section 182.245. (*; Sec. 3114, I. R. C.)

APPENDIX C.

Office of the Solicitor General

Washington, D. C.

July 26, 1945.

Huston Thompson, Esq.
Southern Building
Washington, D. C.

Re: *Levers v. Anderson*

Dear Mr. Thompson:

In order to determine whether the petitions for reconsideration before District Supervisors were treated perfunctorily or had a substantial effect in securing changes in decisions, I asked the Alcohol Tax Unit to prepare a tabulation showing the number of cases in which reconsideration resulted in reversal or modification of decisions. That tabulation shows that approximately 25 per cent of the cases have been reversed on reconsideration. As a result, I believe that the Government will take the position, as suggested in the brief in opposition, that although petitions for rehearing are not ordinarily a prerequisite to judicial review, the special characteristics of the petition for reconsideration under the Alcohol Act regulations support the decision below.

Inasmuch as our position would be based to a considerable extent upon the tabulation referred to and since your brief is due to be filed before ours, I thought that you should both know what we intend to argue and have a copy of the tabulation we intend to use. The tabulation is based upon decisions of the District Supervisors which are public in the sense that they are *not at all confidential*, but are not published or distributed generally. (Emphasis ours)

Yours sincerely,

ROBERT L. STERN.

Data compiled from records in District Supervisors' offices re *Applications for Reconsideration* of their previous orders in administrative proceedings involving basic permits under the F. A. A. Act filed with the fifteen District Supervisors under Sec. 182.255 of A. T. U. Regulations No. 3.

NUMBER OF CASES IN WHICH:

Number of Applications filed & acted on:	Opportunity afforded parties for oral argument on their applications:	Such opportunity not afforded:	Applications orally argued before District Supervisors:	Applications not so argued because not desired by parties, etc.:	Briefs filed by parties in support of their Applications:	Briefs filed by Govt. Attys. in opposition:	Their previous orders affirmed by District Supervisors without changes, modifications or assignments:	Their previous orders affirmed by District Supervisors, after changing, modifying or amending the same:	Their previous orders reversed or set aside by District Supervisors:
54 (1)	48	5 (2)	41	10 (3)	26	7	25	16	13

- (1) This figure 53 does not include:
- (a) 2 cases in which Applications were filed and later withdrawn:
 - (b) 1 case in which the application was not considered because it was not in compliance with the regulations; and
- (2) (a) In 1 of these 5 cases, the legal point involved had been previously argued:
- (b) In 3 of these 5 cases opportunity for oral argument was not afforded because it was not requested, and also because the parties desired the matter decided on the record without oral argument, re the latter reason see (3); and
 - (c) In 1 of these 5 cases opportunity for oral argument was not afforded because the Application did

not disclose any new matter not previously argued.

(43) 3 of these 10 cases are duplication of the 3 cases mentioned in (2)(b).

July 27, 1945.

The Hon. Robert L. Stern,
Office of the Solicitor General,
Department of Justice,
Washington, D. C.

Re: Levers v. Anderson.

My dear Mr. Stern:

This is to acknowledge receipt of and to thank you for your letter of July 26th.

Among several reasons, I have a quite serious doubt as to whether data such as you suggested in your letter is permissible at this time as a matter of evidence, in view of the fact that it was never presented in the record that was before the lower court. Nevertheless, I want to thank you for your courtesy in bringing the matter to my attention.

Cordially yours, ,

HUSTON THOMPSON.

APR 30 1945

CHARLES ELMORE PROBLEY
CLERK

No. 1085.

In the Supreme Court of the United States

OCTOBER TERM, 1944

FOREST E. LEVERS, ADMINISTRATOR, ETC.,
PETITIONER,

v.

A. V. ANDERSON, DISTRICT SUPERVISOR, ALCOHOL
TAX UNIT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE TENTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1085

FOREST E. LEVERS, ADMINISTRATOR, ETC.,
PETITIONER,

v.

A. V. ANDERSON, DISTRICT SUPERVISOR, ALCOHOL
TAX UNIT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE TENTH
CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the Circuit Court of Appeals
(R. 457-458) is reported in 147 F. 2d 547.

JURISDICTION

The judgment of the Circuit Court of Appeals
was entered on January 23, 1945 (R. 459). A
petition for rehearing and modification of judg-
ment (R. 459-460) was denied on February 23,
1945 (R. 460-461). The petition for writ of

certiorari was filed in this court on March 27, 1945. The jurisdiction of this court is invoked under Section 4 (h) of the Federal Alcohol Administration Act (c. 814, 49 Stat. 977) and Section 240 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an application for reconsideration provided for by administrative regulation is a condition precedent to judicial review, under Section 4 (h) of the Federal Alcohol Administration Act, of orders entered under Sections 4 (b) and 4 (e) of that Act.

STATUTE AND REGULATIONS INVOLVED.

The pertinent provisions of the Federal Alcohol Administration Act, 49 Stat. 977, 27 U. S. C. 201, and of the applicable regulations are printed in the appendix hereto, *infra*, pp. 16-23.

Reorganization Plan No. III (54 Stat. 1231), prepared pursuant to the Reorganization Act of 1939 (53 Stat. 561), which became effective June 30, 1940, by Joint Resolution of June 4, 1940 (54 Stat. 230, 231), provided that the functions of the Administrator under the Federal Alcohol Administration Act "shall be administered under the direction and supervision of the Secretary of the Treasury through the Bureau of Internal Revenue in the Department of the Treasury." The Secre-

tary of the Treasury delegated the functions of the Administrator "to the Deputy Commissioner of the Bureau of Internal Revenue in charge of the Alcohol Tax Unit, to be exercised by him under the direction and supervision of the Commissioner of Internal Revenue and the Secretary of the Treasury." (Treasury Department Order No. 30, 5 Fed. Reg. 2212). Subsequently these same powers were also delegated to the District Supervisors of the Alcohol Tax Unit, to be exercised by them subject to the supervision and direction of the Deputy Commissioner (Treasury Decision 4982, 5 Fed. Reg. 2549).

STATEMENT

Pursuant to the provisions of the Federal Alcohol Administration Act, Forest E. Levers and Ray E. Levers, d/b/a Levers Brothers, applied for and, on March 21, 1936, were issued a wholesaler's basic permit (R. 153). On October 1, 1941, Ray E. Levers died (R. 154). On October 6, 1941, the Probate Court of Chaves County, New Mexico, appointed Forest E. Levers "Special Administrator of the Estate of Ray E. Levers * * * insofar as the partnership assets in the firm of Levers Brothers is concerned" (R. 166). On October 10, 1941, Oran C. Dale was "appointed co-administrator with F. E. Levers to administer the partnership assets" of Ray Levers (R. 168). Thereafter in accordance with the require-

ments of Section 4 (g) of the Act, Forest E. Levers and Dale applied for and, on December 26, 1941, were issued a new wholesaler's basic permit (R. 170).

On November 5, 1943, respondent, District Supervisor, acting pursuant to Section 4 (e) of the Act, issued an order to show cause why the basic permit issued on December 26, 1941, should not be annulled (R. 146).

On November 15, 1943, Dale was discharged by the Probate Court as co-administrator in anticipation of his reporting on duty in the United States Army (R. 179).

On November 29, 1943, Forest E. Levers, as co-partner and Special Administrator, applied for a new wholesaler's basic permit and for an importer's basic permit (R. 171, 181). On December 18, 1943, pursuant to Section 4 (b), respondent issued a notice of contemplated denial of each of these two applications (R. 180, 191, 198).

The order to show cause why the wholesaler's basic permit should not be annulled charged that the permit had been secured by misrepresentation and concealment of material facts relating to the ownership or control of another corporation and to the ownership or control, in violation of Sections 5 (a) and 5 (b) of the Act, of outlets dispensing alcoholic beverages at retail (R. 146-148). The ownership or control of these retail outlets was also assigned as the basis of the charge, made

in each of the notices of contemplated denial, that the proposed business would not be maintained in conformity with Federal law (R. 180, 191, 198).

Petitioner requested a hearing on the order to show cause why the wholesaler's basic permit issued December 26, 1941, should not be annulled and on each of the notices of contemplated denial. The hearings in the three proceedings were consolidated. (R. 4-6.) Petitioner, while actively participating in the hearing, introduced no evidence in his behalf. After the hearing, the Hearing Officer made a consolidated report containing findings of fact that petitioner had made the misrepresentations charged (R. 377-421). These findings were adopted by the respondent, the District Supervisor, who then issued an order of annulment, an order denying the application for wholesalers basic permit, and an order denying the application for an importers basic permit (R. 421-427).

The controlling regulations (*infra*, pp. 21-23) permitted petitioner to apply to the District Supervisor for reconsideration of his order; the order was automatically stayed for the twenty days in which such an application could be filed and pending any such proceedings. The regulations also permitted appeal to the Deputy Commissioner of Internal Revenue after reconsideration by the Supervisor, but provided that: "Appeal to the [Deputy] Commissioner is not required."

Petitioner neither applied for reconsideration by the Supervisor nor appealed to the Deputy Commissioner. Instead he filed in the Circuit Court of Appeals a single petition praying that the orders of the respondent be set aside (R. 2).¹ That court, without considering the merits, dismissed the petition for failure to exhaust administrative remedies (R. 457-458). It stated that while appeal to the Deputy Commissioner "may no longer be a condition precedent to judicial review in view of" amendments to the regulations, the amendments "do not do away with the application for reconsideration, an administrative remedy not availed of by the petitioner" (R. 458).

DISCUSSION

I

The necessity of applying for rehearing before seeking judicial review

The court below has held that petitioner has not exhausted his administrative remedies, and hence cannot obtain judicial review, because he has not filed a petition for reconsideration before the District Supervisor. The ground of decision would appear to apply to all administrative bodies which permit, but do not require, applications for rehearing.

Outside of cases under the statute here involved, the federal administrative agencies have

¹ Respondent did not challenge the right of petitioner to file a single petition for review of the three orders.

not (at least since 1923²) taken the position that application for rehearing is essential to judicial review of an administrative order in the absence of a statutory requirement to that effect.³ Any such rigid requirement would in the vast majority of cases tend to prolong the administrative process and to increase the burden upon administrative agencies without compensating benefits. For most applications for rehearing, which raise no question not previously considered, waste the time both of the litigant and of the tribunal, whether it be judicial or administrative. Just as an order of a lower court is deemed final for purposes of appellate review despite the possibility of rehearing, so should the order of an administrative body.

This Court has indicated, in at least two cases, that the absence of an application for rehearing is not sufficient to invoke the doctrine requiring the exhaustion of administrative remedies. *United States v. Abilene & Southern Ry. Co.*, 265 U. S. 274, 281-282; *Prendergast v. New York Tel. Co.*, 262 U. S. 43, 48-49. The first of these cases suggests that in special circumstances (such as the possibility of an appeal from a division to the full

² In *United States v. Abilene & Southern Ry. Co.*, 265 U. S. 274, 281-282, discussed below.

³ The Court of Appeals for the District of Columbia seems to have so held; as an alternative basis for decision, in *Malloy Coal Co. v. National Bituminous Coal Commission*, 99 F. 2d 399, 406-407, but the Government had advanced no such contention.

Interstate Commerce Commission) a court of equity may in the exercise of its discretion require a petition for rehearing, but it clearly holds that the requirement is not "jurisdictional", in the sense that the "long settled rule of judicial administration" as to the exhaustion of administrative remedies automatically applies.

Of course an application for rehearing is a jurisdictional prerequisite to judicial review when the statute so provides, as does the Transportation Act of 1940⁵ (54 Stat. 915-916, 49 U. S. C. § 17 (6)-(10)), the Federal Power Act (49 Stat. 860, 16 U. S. C. § 825l), and the Natural Gas Act (52 Stat. 831, 15 U. S. C. § 717r).

And when a statute contains the common requirement that no objection to the administrative order not urged before the administrative body shall be considered by the court,⁶ an application for rehearing would seem to be necessary as to those points not urged prior to the original administrative decision.⁷ We do not read such

⁴ *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50.

⁵ This was a new provision in the Interstate Commerce Act. Its purpose and effect is to require appeals from divisions to the full Commission before seeking judicial review.

⁶ E. g., in addition to Section 4 (h) of the Federal Alcohol Administration Act, quoted in the Appendix, *infra*, p. 20, the Securities Act of 1933 (48 Stat. 80, 15 U. S. C. § 77i); National Labor Relations Act (49 Stat. 454, 29 U. S. C. § 160 (e)).

⁷ Thus when findings accompany the administrative decision, without any proposed findings having previously been issued, as is the practice under the regulations implementing

provisions, however, as meaning that contentions advanced prior to the issuance of an order must be renewed in an application for rehearing; although it is possible to construe the provision as meaning that the objection must run to an order already issued, such an interpretation does not comport with the obvious legislative purpose of the provision, and would have the unfortunate effects on the administrative process to which reference has been made (*supra*, p. 7).^{*} When Congress has wished to have all objections raised in a petition for rehearing it has said so specifically, as in the Federal Power and Natural Gas Acts.^{*}

A special problem arises when an order of a subordinate official or unit of the administrative agency has the force of law, but is subject to review, on application, by a superior official or body. *United States v. Abilene & Southern Ry. Co.*, 265 U. S. 274, indicates that in such cases a court may exercise its discretion as to whether to

the Federal Alcohol Administration Act, the contention that the findings are inadequate can only be raised in an application for rehearing or reconsideration.

^{*}The *Mallory Coal* case (*supra*, p. 7) appears to take a contrary position. See also *Peoria Braumeister Co. v. Yellowley*, 123 F. 2d 637, 640 (C. C. A. 7), discussed, *infra*, p. 11.

^{*} See p. 8, *supra*. These statutes provide that:

"No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission *in the application for rehearing* unless there is reasonable ground for failure so to do."

The italicized phrase is not contained in the Federal Alcohol Administration Act or other similar statutes.

require an administrative appeal before taking jurisdiction.¹⁰ Customarily, at least where an order is not immediately effective and in the absence of a special statute, regulation or policy to the contrary, it would seem that the courts should not review administrative action which has not been prosecuted as far as the highest administrative official. For in such cases the application for reconsideration is not being submitted to the tribunal which made the original decision.

II

Application of these principles to the regulations under the Federal Alcohol Administration Act

The application of these principles to the Federal Alcohol Administration Act raises two problems: (a) whether an application for reconsideration to the District Supervisor who issued the order is essential to judicial review, and (b) whether an appeal to the Deputy Commissioner¹¹ is required. These points must be discussed in the light of the administrative regulations and practice.

Prior to a revision effective June 4, 1942, the administrative regulations permitted applications

10/ In the Abilene case there was, however, no administrative or statutory stay of the order such as there is here.

¹¹ The regulations define "Commissioner" as including the Deputy Commissioner in charge of the Alcohol Tax Unit (§ 182.6 (k), 7 Fed. Reg. 1865), and we shall refer to the latter as the "Commissioner."

for reconsideration to be filed with the District Supervisor within twenty days of the entry of his order, and an appeal to the Commissioner within ten days of the final order of the Supervisor. The Commissioner would set aside an order only if arbitrary or contrary to law or regulations. The operation of the order was automatically stayed during the twenty days (and an additional 10 days for appeals to the Commissioner) and the pendency of any further proceedings instituted during that period. While this regulation was in effect the Circuit Courts of Appeals for the Fifth and Seventh Circuits held that a person must exhaust these remedies, including appeal to the Commissioner, before asking judicial review. *Peoria Braumeister Co. v. Yellowley*, 123 F. 2d 637 (C. C. A. 7); *Leebern v. United States*, 124 F. 2d 505 (C. C. A. 5). Inasmuch as the appeal to the Commissioner brought the case to a higher official, we believe that these cases were correctly decided.

In 1942, with the deliberate object of making it unnecessary for a party to appeal to the Commissioner before going to court, the regulations were amended by inserting the sentence: "Appeal to the Commissioner is not required." 7 Fed. Reg. 1858, 1889-1890.¹² An appeal to the Commissioner was still permitted, however, on the same terms as before.

The Commissioner does not suggest that appeal to him from the District Supervisor is essential

¹² This revision contained other changes immaterial here.

to the exhaustion of administrative remedies. As we have seen, the regulation was amended by him in order to make that unnecessary, and if there be doubt as to whether the amendment compelled this result, his own interpretation of it, which has been communicated to and relied upon by persons subject to the Act, should be persuasive, and perhaps controlling.¹³ There may be some question as to the power of an administrator to create an administrative remedy, and at the same time prevent extension to it of the principle of exhaustion. Here the Commissioner could have made the District Supervisor's decision final, and whether an administrative appeal should be allowed was for him to decide. Since the subject of the appropriate administrative procedure is within his control, it seems reasonable that he should be able to determine the essentiality of the administrative appeal.

This leaves to be determined the effect of the failure to apply for reconsideration before the District Supervisor. In this connection, the provisions of the regulations should be noted. They provide that the District Supervisor "may hear the application on a date and at a place to be

¹³ *Federal Communications Commission v. Pottsville Broadcasting Co.*, 309 U. S. 134, 143n; *Norwegian Nitrogen Co. v. United States*, 288 U. S. 291, 325; *American Tel. and Tel. Co. v. United States*, 299 U. S. 232, 242; *Morgan Stanley & Co. v. Securities & Exchange Commission*, 126 F. 2d 325 (C. C. A. 2).

fixed by him," and that "after hearing such application" he may either affirm or set aside his previous order. Although perhaps not required by its language, this regulation has been interpreted in practice as providing for a new oral argument, with a right to file briefs if desired, before the District Supervisor.

If an application for reconsideration were merely the equivalent of an ordinary petition for rehearing, in which a court or agency is requested to decide whether it will rehear a case,¹⁴ we would conclude that the order was judicially reviewable despite the absence of an application and that the decision below was incorrect. See Point I, *supra*, pp. 6-10. But the application here performs a more important function. For under the regulations, as administratively interpreted, it enables a party to reargue his case fully both orally and in writing and also automatically stays the operation of the order. These factors would seem to differentiate an application under these regulations from the ordinary petition for rehearing, which may be given only slight consideration unless a new point is raised. The applicant's position is more closely akin to that of a person whose petition for rehearing has been granted and the case scheduled for reargument. In that situation, an

¹⁴ "It has been almost a rule of necessity that rehearings were not matters of right, but were ~~pleas~~ to discretion." *Interstate Commerce Commission v. City of Jersey City*, 322 U. S. 503, 514.

administrative order could not be reviewed until after the application had been disposed of. *Southland Industries v. Federal Communications Commission*, 99 F. 2d 117 (App. D. C.), and cases cited.

The application for reconsideration under the regulations here involved is not a mere formal request to be heard anew. It gives the applicant a new opportunity to present his contentions, and leads to a new order affirming or setting aside the original order. And the very fact that the administrators of this statute do not treat the application as perfunctory, but give it substantial consideration before letting the original order become effective, indicates that in their view it is a significant part of the administrative proceeding. It is thus not unreasonable to require a person aggrieved by an order of the District Supervisor to avail himself of this procedure before seeking judicial relief.

CONCLUSION

To the extent that the decision below may be regarded as establishing a general principle of administrative law as to the need for applying for rehearing before seeking judicial relief, it raises an important question and, in our view, is incorrect. The decision is supportable, however, if limited to proceedings under the regulations now in force under the Federal Alcohol Administration Act. Whether a rehearing must be sought under

those regulations probably does not present a question warranting review by this Court. The important consideration is that parties know whether they must apply for reconsideration, and the decision below, if not reviewed and reversed, will in itself induce them to pursue that course.

Respectfully submitted.

HUGH B. COX,
Acting Solicitor General,

ROBERT L. STERN,
Special Assistant to the Attorney General.

APRIL, 1945.

APPENDIX

A. THE ACT

The Federal Alcohol Administration Act, 49 Stat. 977 (27 U. S. C. 201) provides in part as follows:

SEC. 2 * * * (d) The Administrator is authorized and directed to prescribe such rules and regulations as may be necessary to carry out his powers and duties. All rules and regulations prescribed by the Administrator shall be subject to the approval of the Secretary of the Treasury.

SEC. 3 * * * (a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.

* * * * *

(c) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

* * * * *

SEC. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation, any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor, including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

(b) If upon examination of any application for a basic permit the Administrator has reason to believe that the applicant is not entitled to such permit, he shall notify the applicant thereof and, upon request by

the applicant, afford him due notice and opportunity for hearing on the application. If the Administrator, after affording such notice and opportunity for hearing, finds that the applicant is not entitled to a basic permit hereunder, he shall by order deny the application stating the findings which are the basis for his order.

* * * * *

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

(e) A basic permit shall by order of the Administrator, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Administrator deems appropriate, if the Administrator finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Administrator finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the Administrator finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

* * * * *

(g) A basic permit shall continue in effect until suspended, revoked, or annulled as provided herein, or voluntarily surrendered; except that (1) if leased, sold or otherwise voluntarily transferred, the permit shall be automatically terminated thereupon, and (2) if transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock-ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of thirty days thereafter: *Provided*, That if within such thirty-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such application is finally acted on by the Administrator.

(h) An appeal may be taken by the permittee or applicant for a permit from any order of the Administrator denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Administrator, or upon any officer designated by him for that purpose, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon

the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. The finding of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Administrator shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection

shall, unless specifically ordered by the court to the contrary, operate as a stay of the Administrator's order.

B. THE REGULATIONS

The pertinent regulations are Sections 182.255 and 182.257 of the regulations relating to industrial alcohol (7 Fed. Reg. 1858, 1889-1890, 1890, March 12, 1942) which were made applicable to orders denying, suspending, revoking or annulling basic permits entered under the authority of Sections 4 (b) and 4 (e) of the Federal Alcohol Administration Act (Treasury Decision 4982, 5 Fed. Reg. 2549-2550, July 13, 1940). They read as follows:

SEC. 182.255. *Reconsideration of order revoking permit.*—(a) *Time for filing application.*—Within 20 days after an order is made by the Commissioner or district supervisor revoking a basic permit, the permittee may file an application with such Commissioner or district supervisor, for a reconsideration of such order, on one or more of the following grounds:

- (1) The order is contrary to law; or
- (2) Is not supported by the evidence; or
- (3) Because of newly discovered evidence which the permittee, with due diligence, was unable to produce at the hearing.

If the application is based on grounds (1) or (2), the permittee shall specify therein, by reference to the record, in what respects the order is contrary to law or is not supported by the evidence, as the case may be. If the application is based on ground (3), the permittee shall summarize therein the newly discovered evidence and set forth

why he was unable to produce such evidence prior to the closing of the record.

(b) *Time of hearing.*—The Commissioner or district supervisor, with whom such application is filed, may hear the application on a date and at a place to be fixed by him. The Commissioner or district supervisor, as the case may be, after hearing such application, may either affirm the order of revocation previously made, or may vacate and set aside such order and dismiss the proceedings or order a new hearing of the evidence before a designated hearing officer.

(c) *Permit privileges.*—During the period above provided for filing application for reconsideration, and until final order is duly made after such reconsideration, if such application is filed within the time provided therefor, the permit involved shall continue in force and effect, except as to restrictions on withdrawals or transportation as may be ordered by the Commissioner or district supervisor, as provided in section 182.245.

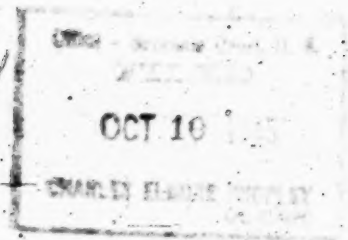
SEC. 182.257. *Appeal to the Commissioner.*—Appeal to the Commissioner is not required. However, the Commissioner may, in his discretion, in order to insure uniformity of administrative action, entertain an appeal, after review and reconsideration as provided in section 182.255, from an order of revocation of a basic permit by a district supervisor, if filed with the Commissioner within 10 days of the date of the final order.

(a) *Petition.*—The petition for review must set forth facts tending to show action of an arbitrary nature, or of a proceeding and action contrary to law or regulations. No objection to the final order of the dis-

district supervisor will be considered by the Commissioner unless such objection was urged before the district supervisor in the permittee's application for reconsideration, or unless reasonable grounds for failure to urge such objections are set forth in the petition for review.

(b) *Permit privileges.*—If such request is filed within the required time, the permit involved shall continue in force and effect until the final order by the Commissioner, except as to such restrictions upon withdrawals or transportation as may be imposed by the district supervisor, as provided in section 182.245.

FILE COPY



No. 51

In the Supreme Court of the United States

OCTOBER TERM, 1945

FOREST E. LEVERS, ADMINISTRATOR, ETC.,
PETITIONER

v.

A. V. ANDERSON, DISTRICT SUPERVISOR, ALCOHOL
TAX UNIT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 51

FOREST E. LEVERS, ADMINISTRATOR, ETC.,
PETITIONER

v.

A. V. ANDERSON, DISTRICT SUPERVISOR, ALCOHOL
TAX UNIT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the Circuit Court of Appeals
(R. 457-458) is reported in 147 F. 2d 547.

JURISDICTION

The judgment of the Circuit Court of Appeals
was entered on January 23, 1945 (R. 459). A
petition for rehearing and modification (R. 459-
460) was denied on February 23, 1945 (R. 460-
461). The petition for writ of certiorari was
filed in this court on March 27, 1945. The juris-
diction of this court is invoked under Section 4

(h) of the Federal Alcohol Administration Act (c. 814, 49 Stat. 977) and Section 240 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether, as the court below seemingly held, a petition for rehearing is an administrative remedy prerequisite to judicial review.

2. If not, whether the application for reconsideration permitted by the regulations under the Federal Alcohol Administration Act is a prerequisite to judicial review.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Federal Alcohol Administration Act, 49 Stat. 977, 27 U. S. C. 201, are printed in Appendix A, *infra*, pp. 27-31. The controlling regulations are the Treasury Regulations relating to industrial alcohol, 26 C. F. R. Cum. Supp. 182.245-257, 7 Fed. Reg. 1858, 1889-1890; by an order of the Secretary of the Treasury issued July 9, 1940 the procedure prescribed in those regulations for issuing, denying and revoking permits was "extended to the issuance, amendment, denial, revocation, suspension and annulment of basic permits under the Federal Alcohol Administration Act, in so far as applicable and in so far as such procedure is not in conflict with the provisions of such Act." 26 C. F. R. Cum. Supp. 171.4d, 5 Fed. Reg. 2550. The pertinent pro-

visions of these regulations are set forth in Appendix B, *infra*, pp. 32-37.

Reorganization Plan No. III (54 Stat. 1231; 5 U. S. C. 133t note), prepared pursuant to the Reorganization Act of 1939 (53 Stat. 561), which became operative June 30, 1940, by Joint Resolution of June 4, 1940 (54 Stat. 230, 231; 5 U. S. C. 133u), provided that the Federal Alcohol Administration, the offices of the members thereof and the office of Administrator should be abolished and the functions of the Administrator "administered under the direction and supervision of the Secretary of the Treasury through the Bureau of Internal Revenue." The Secretary of the Treasury delegated the functions of the Administrator "to the Deputy Commissioner of the Bureau of Internal Revenue in charge of the Alcohol Tax Unit, to be exercised by him under the direction and supervision of the Commissioner of Internal Revenue and the Secretary of the Treasury." (Treasury Order No. 30, 26 C. F. R. Cum. Supp. 171.4a, 5 Fed. Reg. 2212.) Subsequently the power previously vested in the Deputy Commissioner to issue, deny, revoke, and suspend basic permits was "also hereby delegated to District Supervisors of the Alcohol Tax Unit, to be exercised by them, subject to the supervision and direction of the said Deputy Commissioner." (Treasury Decision 4982, 26 C. F. R. Cum. Supp. 171.4c, 5 Fed. Reg. 2549.)

STATEMENT

On December 26, 1941, petitioner (with a temporary co-administrator)¹ received a wholesaler's basic permit under the Federal Alcohol Administration Act (R. 170). On November 5, 1943 respondent, District Supervisor, Alcohol Tax Unit of the Bureau of Internal Revenue, issued an order to show cause why the permit previously issued should not be annulled (R. 146). On November 29 petitioner applied for a new wholesaler's basic permit and for an importer's basic permit (R. 171-172, 181-182). On December 18, pursuant to the procedure prescribed in Section 4 (b) of the Act, respondent notified petitioner of the contemplated denial of the applications unless petitioner applied for a hearing within fifteen days (R. 180-181, 191-193).

The order to show cause why the wholesaler's basic permit should not be annulled charged that the permit was subject to annulment under Section 4 (e) (3) of the Act because it had been obtained by concealment and misrepresentation of material facts relating to the ownership or con-

¹ The business enterprise here involved was originally owned by petitioner Forest Levers and his brother Ray Levers. Upon Ray's death in 1941, Forest and Oran C. Dale were appointed co-administrators (R. 166, 168), but Dale was discharged as co-administrator upon his entrance into military service (R. 179). The business has since been owned by Forest Levers as co-partner and as administrator for his brother. We shall refer to Forest Levers as petitioner without differentiating between his several capacities.

trol of another corporation and to the ownership or control, in violation of Sections 5 (a) and 5 (b) of the Act, of outlets selling alcoholic beverages at retail (R. 146-148). The basis of the charge made in each of the notices of contemplated denial (R. 180-181, 191-193) was that the evidence in the pending annulment proceedings was persuasive that the business proposed to be carried on would not be maintained in conformity with law. In a letter to petitioner giving more fully the reasons for the contemplated denial of petitioner's applications for basic permits, the respondent stated that petitioner's business practices result in control of certain retail outlets for spirits, wines or malt beverages in the State of New Mexico, that such control "affects the purchasing policies of these outlets" as to liquors moving in interstate commerce, and that "Levers Brothers would continue to control the path" of such liquor to their own advantage and the disadvantage of others (R. 198-199).

Petitioner requested a hearing on the order to show cause why its wholesaler's basic permit should not be annulled and on each of the two notices of contemplated denial (R. 193-194). The hearings in the three proceedings were consolidated (R. 4-6). Although petitioner took part in the hearing, he introduced no evidence in his behalf.

After the hearing, the Hearing Officer made a consolidated report (R. 377-421) in which he found that petitioner had made the misrepresentations of fact charged and had withheld material facts as charged (R. 418-421). The evidence supporting these findings showed that through a dummy corporation Levers Brothers in part owned and in part controlled a chain of retail liquor stores which served as an outlet for its wholesale liquor business (R. 14-47, 53-87, 253-298, 341-343) and that these facts were concealed and withheld by them in their applications for basic permits (R. 163, 175-176, 188-189).

The Hearing Officer's findings were adopted by respondent, the District Supervisor. On the basis of these findings he issued an order of annulment, an order denying the application for a wholesaler's basic permit, and an order denying the application for an importer's basic permit (R. 421-427).

The controlling regulations (*infra*, pp. 35-36) permitted petitioner to apply to the District Supervisor for reconsideration of his order, the order being automatically stayed for 20 days to allow time for the application to be made, and until final disposition of the application. Such reconsideration would have allowed the petitioner to except to the findings and to argue before the District Supervisor for the first time. See pp. 18-20, *infra*. The regulations also permitted appeal to the Deputy Commissioner of Internal Revenue

after reconsideration by the District Supervisor, but provided that "Appeal to the [Deputy] Commissioner is not required" (*infra*, p. 37).

Petitioner pursued neither of the two methods available for administrative relief, but filed in the Circuit Court of Appeals a petition praying that the three orders of respondent be set aside (R. 2). Without considering the merits, that court dismissed the petition for failure to exhaust administrative remedies (R. 457-458). It stated that under the amended regulations appeal to the Deputy Commissioner may no longer be a condition precedent to judicial review, but pointed out that the amendments "do not do away with the application for reconsideration, an administrative remedy not availed of by the petitioner" (R. 458).

SUMMARY OF ARGUMENT

The court below held that petitioner has not exhausted his administrative remedies, and hence cannot obtain judicial review, because he has not filed an application for reconsideration before the District Supervisor. In so far as appears from the opinion this decision would seem to mean that whenever an administrative agency permits a petition for rehearing or reconsideration to be filed, such a petition is a necessary prerequisite to judicial review. In our view, the doctrine that administrative remedies must be exhausted does not go that far. The application for reconsideration permitted by the regulations of the Alcohol Tax Unit performs, however, a different function than the

ordinary petition for rehearing. For the applicant receives an opportunity to except to findings and argue his case before the deciding official for the first time, and in a substantial proportion of cases the prior decision is reversed or modified. During the period of reconsideration the operation of the original order is stayed. These factors may so differentiate the application from an ordinary petition for rehearing as to justify a court in requiring a party to avail himself of the additional administrative remedy before seeking judicial relief.

ARGUMENT

Although the court below may not have intended to go so far, its opinion may be read as holding that a petition for rehearing before an administrative body is a general prerequisite to judicial review. In Point I we discuss the question whether and under what circumstances the doctrine of exhaustion of administrative remedies should require an application for rehearing. In Point II we apply the general principles to the peculiar procedure established by Treasury Regulations under the Federal Alcohol Administration Act.

I

THE ORDINARY PETITION FOR REHEARING SHOULD NOT BE A PREREQUISITE TO JUDICIAL REVIEW

The rule that courts will not act where administrative remedies remain available has its roots in

the practical desirability of minimizing the extent of judicial interference with the administrative process, as well as the analogous principle that a court of equity will not act as long as there is an adequate remedy at law.² The "long settled rule of judicial administration" (*Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50) prevents resort to the courts while there is still a chance that a person may obtain adequate relief from the administrative agency. The rule is not technical or jurisdictional, however, but is grounded on practical considerations. When the benefit in lessening the need for review of administrative orders and consequent interference with administrative action, and the value of the exhaustion rule to the administrative body, are outweighed by the burden which strict application of the rule might impose on both the agency and the aggrieved party, the rule is not applied.

We believe that any rigid requirement that an application for rehearing is essential to judicial review of administrative orders would in the vast majority of cases tend to prolong the administrative process and to increase the burden upon administrative agencies without compensating benefits. The application for rehearing is cus-

² See Berger, *Exhaustion of Administrative Remedies* (1939) 48 Yale L. J. 981, 988-990; Stason, *Timing of Judicial Redress from Erroneous Administrative Action* (1941), 25 Minn. L. Rev. 560, 568; Note (1938) 51 Harv. L. Rev. 1251, 1252-1254.

tomarily merely a prayer for an opportunity to reargue, which is usually denied. It will scarcely be gainsaid that most applications for rehearing, which raise no question not previously considered, waste the time both of the litigant and of the tribunal, whether it be judicial or administrative. Just as an order of a lower court is deemed final for purposes of appellate review despite the possibility of rehearing, so should the order of an administrative body. This Court has twice held that the absence of an application for rehearing is not sufficient to invoke the doctrine requiring the exhaustion of administrative remedies. *Prendergast v. New York Tel. Co.*, 262 U. S. 43, 48-49; *United States v. Abilene & Southern Ry. Co.*, 265 U. S. 274, 281-282. See also *Banton v. Belt Line Ry. Co.*, 268 U. S. 413, 416-417; but cf. *Vandalia R. Co. v. Public Service Commission*, 242 U. S. 255, 260-261.³

³ Lower court decisions holding applications for rehearing unnecessary are *Baltimore & O. R. Co. v. Railroad Commission*, 196 Fed. 690, 693 (C. C. Ind.); *Chicago Rys. Co. v. Illinois Commerce Commission*, 277 Fed. 970, 974 (N. D. Ill.); *Canadian River Gas Co. v. Terrell*, 4 F. Supp. 222, 228 (W. D. Tex.); *Contra Louisville & N. Ry. Co. v. United States*, 218 Fed. 89 (W. D. Va.); *Mallory Coal Co. v. National Bituminous Coal Commission*, 99 F. 2d 399, 406-407 (App. D. C.).

In commenting upon the implication in *Red River Broadcasting Co. v. Federal Communications Commission*, 98 F. 2d 282 (App. D. C.) that a petition for rehearing may be necessary, Dean Stason has declared:

"The circumstances of the case were somewhat unusual, for the reason that the complainant in the case had not been

In order that we might be able to apprise the Court of the practice of the various administrative agencies and of their views as to whether an application for rehearing should be required prior to judicial review, an inquiry was addressed to each agency asking for a statement of its practice and position on the question. The replies showed that whether or not rehearings were specifically permitted in statute or regulation, the agencies uniformly allowed applications for rehearing to be filed and gave them substantially the same consideration as they are given by a court. The agencies were also in substantial accord that, in the absence of an express statutory

a party to the proceeding before the commission, although he claimed to have been adversely affected by the order which granted a broadcasting license to a competitor. The decision may not mean that a party to the proceedings who has already presented his case to the tribunal must file a motion for rehearing under the permissive type of statute. Indeed, to impose such a requirement would seem to carry the exhaustion doctrine too far. To require a motion for rehearing in such cases, with its consequent delays, when the legislature creating the commission has not seen fit to make the motion mandatory as a condition precedent to the appeal, seems unnecessary to orderly procedure. The motion is almost sure to be overruled and thus prove quite futile. In this respect it differs from the appeal to a higher administrative agency, where futility is not to be anticipated, but, on the other hand, correction of error may be expected."

Stason, *Timing of Judicial Redress from Erroneous Administrative Action* (1941), 25 Minn. L. Rev. 560, 571-572. See also, Note (1935) 35 Col. L. Rev. 240, 241; Note (1938) 51 Harv. L. Rev. 1251, 1262; Note (1941) 29 Calif. L. Rev. 515, 516. Cantrac Berger, *Exhaustion of Administrative Remedies* (1939) 48 Yale L. J. 981, 988-990.

provision, to require rehearing in every case before resorting to the courts would be unwise and undesirable. The views of the administrative bodies themselves on such a matter should carry considerable weight.⁴

Nothing that has been said is intended to suggest that a petition for rehearing is unnecessary when a statute, such as the Federal Power Act⁵ and the Natural Gas Act,⁶ provides that an application for rehearing must be made prior to judicial review. Furthermore, at least when a statute contains the common requirement that no objection to the administrative order not urged before the administrative body shall be considered by the court, an application for rehearing would seem to be necessary as to those points not urged prior to the original administrative decision. Thus when findings accompany the administrative decision without any prior issuance of proposed findings, as is the practice under the regulations implementing the Federal Alcohol Administration Act, the contention that the findings are inadequate or unsupported can only be

⁴ The letters from the various administrative agencies are in the possession of the Solicitor General, and will be available to the Court.

⁵ 49 Stat. 860, 16 U. S. C. § 825l.

⁶ 52 Stat. 831, 15 U. S. C. § 717r.

⁷ E. g., in addition to Section 4 (h) of the Federal Alcohol Administration Act, quoted in the Appendix, *infra*, p. 30, the Securities Act of 1933 (48 Stat. 80, 15 U. S. C. § 77i); National Labor Relations Act (49 Stat. 454, 29 U. S. C. § 160 (e)).

raised in an application for rehearing or reconsideration. We do not read such statutory provisions, however, as meaning that contentions or "objections" advanced prior to the issuance of an order must be renewed subsequent to the order in an application for rehearing; such an interpretation does not comport with the obvious legislative purpose of the provision, and would have the unfortunate effects on the administrative process to which reference has been made.⁸ When Congress has wished to have all objections raised in a petition for rehearing it has said so specifically, as in the Federal Power and Natural Gas Acts.⁹

The considerations we have advanced would ordinarily not apply when administrative orders are being reviewed by a superior administrative official or body. In that situation, the remedy available to an aggrieved party is not in reality a "rehearing", although it is sometimes so described,¹⁰ but an appeal. In the *Abilene & South-*

⁸ The *Mallory Coal* case (99 F. 2d 399, 406-407) appears to take a contrary position. See also *Peoria Braumeister Co. v. Yellowley*, 123 F. 2d 637, 640 (C. C. A. 7).

⁹ See pp. 9-10, *supra*. These statutes provide that:

"No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission *in the application for rehearing* unless there is reasonable ground for failure so to do."

The italicized phrase is not contained in the Federal Alcohol Administration Act or other similar statutes.

¹⁰ As in Section 17 (9) of the Interstate Commerce Act, added by the Transportation Act of 1940, 54 Stat. 916, 49 U. S. C. § 17 (9).

ern case, *supra*, p. 10, this Court held, however, that when an administrative order became immediately effective a trial court had discretion to dispense with the administrative appeal as a prerequisite to judicial review.¹¹ But in the ordinary case it would seem that the courts should not interfere with administrative action which has not been prosecuted as far as the highest administrative official. See *United States v. Sing Tuck*, 194 U. S. 161; *Prentis v. Atlantic Coast Line Ry. Co.*, 211 U. S. 210, 229-230; *McGregor v. Hogan*, 263 U. S. 234; *Porter v. Investors Syndicate*, 286 U. S. 461; Stason, *Timing of Judicial Redress from Erroneous Administrative Action* (1941) 25 Minn. L. Rev. 560, 570.

We do not think that this case comes within any of the above three exceptions to what we conceive to be the general doctrine that applications for rehearing are unnecessary. The Alcohol Administration Act does not contain any provision requiring applications for rehearing prior to judicial review. Petitioner is not seeking to present any issues not raised before the District Supervisor (R. 2, 433). And the regulations are designed to provide that an appeal to a higher official is not essential to judicial review.

¹¹ The addition to the Interstate Commerce Act in 1940, of Section 17 (9), which provides that when a decision has been made by anything less than the full Commission an application for rehearing to the full Commission must precede a suit to set aside the order, was undoubtedly designed to overturn the decision in the *Abilene & Southern* case.

The latter point requires elaboration, inasmuch as an appeal to the Deputy Commissioner of Internal Revenue¹² is allowable. Prior to a revision effective June 4, 1942, the administrative regulations permitted applications for reconsideration to be filed with the District Supervisor within twenty days of the entry of his order, and an appeal to the Commissioner within ten days of the final order of the Supervisor. The Commissioner would set aside an order only if arbitrary or contrary to law or regulations. The operation of the order was automatically stayed during the twenty days (and an additional 10 days for appeals to the Commissioner) and the pendency of any further proceedings instituted during that period. While this regulation was in effect the Circuit Courts of Appeals for the Fifth and Seventh Circuits held that a person must exhaust these remedies, including appeal to the Commissioner, before asking judicial review. *Peoria Braumeister Co. v. Yellowley*, 123 F. 2d 637 (C. C. A. 7); *Leebern v. United States*, 124 F. 2d 505 (C. C. A. 5). Inasmuch as the appeal to the Commissioner brought the case to a higher official, we believe that these cases were correctly decided.

¹² The regulations define "Commissioner" as including the Deputy Commissioner in charge of the Alcohol Tax Unit (§ 182.6 (k), 7 Fed. Reg. 1865), and we shall refer to the latter as the "Commissioner."

In 1942, with the deliberate object of making it unnecessary for a party to appeal to the Commissioner before going to court, the regulations were amended by inserting the sentence: "Appeal to the Commissioner is not required." 7 Fed. Reg. 1858, 1890; 26 C. F. R. 182.257.¹³ An appeal to the Commissioner was still *permitted*, however, on the same terms as before.

In view of this provision in the present regulations, the Government does not suggest that appeal to the Commissioner from the District Supervisor is essential to the exhaustion of administrative remedies. As we have seen, the regulation was amended in order to make that unnecessary, and if there be doubt as to whether the amendment compelled this result, the Treasury's own interpretation of it, which has been communicated to and relied upon by persons subject to the Act, should be persuasive, and perhaps controlling.¹⁴ There may be some question as to the power of an administrator to create an administrative remedy, and at the same time prevent extension to it of the principle of exhaustion. Here the Secretary could have made the District Supervisor's

¹³ This revision contained other changes immaterial here.

¹⁴ *Bowles v. Seminole Rock & Sand Co.*, No. 914, 1944 Term, decided June 4, 1945; *Federal Communications Commission v. Pottsville Broadcasting Co.*, 309 U. S. 134, 143n; *Norwegian Nitrogen Co. v. United States*, 288 U. S. 294, 325; *American Tel. and Tel. Co. v. United States*, 299 U. S. 232, 242; *Morgan Stanley & Co. v. Securities & Exchange Commission*, 126 F. 2d 325 (C. C. A. 2).

decision final, and whether an administrative appeal should be allowed was for him to decide. Since the subject of the appropriate administrative procedure is within his control, it seems reasonable that he should be able to determine the essentiality of the administrative appeal.

II

THE NATURE OF THE APPLICATION FOR RECONSIDERATION UNDER THE ALCOHOL REGULATIONS IS SUCH AS TO JUSTIFY MAKING THE APPLICATION A PRE REQUISITE TO JUDICIAL REVIEW

We have treated at some length the question whether and under what circumstances the doctrine of exhaustion should require petitions for rehearing, inasmuch as that seemingly was the point decided below, and also because that presumably was the issue of importance which prompted this Court to grant certiorari. Our reasons for believing that petitions for rehearing should not be required are based upon the usual characteristics of the rehearing procedure. Customarily the petitioner is asking the agency or court to rehear his case after it has heard him fully once; he is not, or should not be, making a full dress presentation of his position, but only stating why the tribunal should rehear him. The tribunal examines the petition to ascertain if any significant point is raised which it has not fully considered, and does not accord it the same fresh consideration as an original argument or brief.

Although in form the application for reconsideration before the District Supervisor under the Federal Alcohol Administration Act resembles the orthodox petition for rehearing, in its practical operations it is quite different. A respondent in a proceeding before the Alcohol Tax Unit obtains a hearing before a Hearing Officer. 26 C. F. R. Cum. Supp., Sec. 182.250, *infra*, p. 33). At that hearing he may introduce evidence, file a brief and present oral argument. Secs. 182.250 and 182.252, *infra*, pp. 33-34. The Hearing Officer then prepares a summary of the evidence, findings of fact, and his conclusions for transmission with the original transcript of record to the District Supervisor. Sec. 182.253, *infra*, pp. 34-35. The briefs, if any,¹⁵ are sent up as a part of the record. The District Supervisor "after consideration of the record of evidence" approves or disapproves the proposed findings, makes such other findings as he thinks are warranted, issues his order, and serves the order with the approved findings upon the respondent. Sec. 182.254, *infra*, p. 35.

Up to this time the respondent has not seen the original proposed findings nor had opportunity to except to any findings. Nor has he had the opportunity to present oral arguments to the District Supervisor. Under the regulations

¹⁵ In many cases the parties do not choose to file briefs, but rely on the transcript and the oral argument.

he now has twenty days within which to file the "application for reconsideration" of the order on the grounds that it is contrary to law, or not supported by the evidence, or that he has newly discovered evidence available. Sec. 182.255 (a), *infra*, pp. 35-36. The regulations then somewhat ambiguously provide that the District Supervisor "may hear the application on a date and at a place to be fixed by him," and that "after hearing such application" he may affirm or vacate the order. Sec. 182.255 (b), *infra*, p. 36. Although the statement that the Supervisor "may" hear the application seems to make a hearing optional with him, the further declaration that the order may be affirmed or vacated "after hearing" contemplates that the District Supervisor must grant a hearing to the applicant before finally disposing of the application for reconsideration. The latter is the interpretation placed upon the regulation by the Alcohol Tax Unit, and since it is a reasonable construction presumably is binding upon the courts.¹⁰ The result is that in fact the applicant obtains an opportunity to argue the entire case orally, and if he so desires, to file a brief before the District Supervisor. The regulations further provide that during the time in which an application for reconsideration may be filed and until the final order, if an application is timely

¹⁰ See cases cited in note 14, *supra*, p. 16.

filed, the permit involved shall continue in force and effect (with an exception immaterial here). Sec. 182.255 (c), *infra*, p. 36. Accordingly, an application for reconsideration gives an applicant full protection against an order suspending or revoking his permit, and thus maintains the status quo.¹⁷

Thus the application for reconsideration for the first time gives a respondent an opportunity to argue orally before the official who makes the order. In addition it gives him his first chance to see and except to adverse findings of fact. These are desirable procedural safeguards, of value to a litigant even though he has no new evidence to present (cf. *Morgan v. United States*, 298 U. S. 468), and also to the Administrator seeking a just decision. The reconsideration, as the last step before the entry of the Supervisor's final order, is akin to an argument before an administrative body on exceptions to proposed findings, where all prior arguments have been made before an examiner; in such cases, if no exceptions

¹⁷ The denial of an application for a new permit is not stayed pending reconsideration. But since such an applicant has presumably not previously engaged in the business covered by the application, the status quo is maintained without suspending the effect of the denial. Moreover, such an applicant is not so seriously affected, and would be unlikely in any event to embark upon a new enterprise for the period of reconsideration and review. Petitioner in this case would be protected in so far as his wholesaler's basic permit is concerned but not in relation to his application for an importer's basic permit.

are taken to the examiner's findings, an order may be based upon the findings without more. The only difference here is that the original order, though in substance tentative, is issued by the deciding official and is in itself operative unless an application for reconsideration is filed.

That the application for reconsideration is regarded as an integral part of the procedural process and not as the equivalent of an ordinary petition for rehearing is shown by the requirement that an appeal to the Deputy Commissioner may be taken only "after review and reconsideration."

Sec. 182.257, *infra*, p. 37. The regulations specifically provide that "no objection to the final order of the district supervisor will be considered by the Commissioner, unless such objection was urged before the district supervisor in the permittee's application for reconsideration, or unless reasonable grounds for failure to urge such objections are set forth in the petition for review."

Sec. 182.257 (a), *infra*, p. 37. If reconsideration is deemed sufficiently important to be a prerequisite to an administrative appeal, for the same reasons it should be a prerequisite to judicial review.¹⁸

¹⁸ This has been the position of the Alcohol Tax Unit with respect to proceedings under the Federal Alcohol Administration Act. The Unit has not, however, regarded an application for reconsideration as essential to judicial review in proceedings involving permits for industrial alcohol under

The actual experience of the Alcohol Tax Unit tends to confirm the fact that the application for reconsideration before the District Supervisor is a substantial, and not merely a formal, remedy. The procedure in question became effective on July 1, 1940, when the Alcohol Tax Unit took over the administration of the Federal Alcohol Administration Act. Since that time 55 applications for reconsideration have been filed with District Supervisors. Forty-two of these cases were argued orally before the District Supervisors. In 8, or 14.5%, the District Supervisor reversed or set aside the original order, and in 11 other cases, or 20%, the order was modified or amended to respondent's benefit. In 3 other cases, changes were made in findings.¹⁹ If these figures are contrasted with the granting of three out of 190 petitions for rehearing by this Court during the 1943 Term,²⁰ the practical difference between the or-

Internal Revenue Code, Section 3114 (26 U. S. C. § 3114), although the latter proceedings are governed by the identical regulations. See page 2, *supra*.

¹⁹ These figures were compiled by the Alcohol Tax Unit for the information of the Court, at the request of the Solicitor General, from the orders of the District Supervisors, which are not published or distributed but are not confidential. This information, which has been verified and brought up to date, supersedes the table furnished to petitioner in July and printed on p. 36 of petitioner's brief. The underlying material showing the changes in the orders is in the possession of the Solicitor General and available to the Court.

²⁰ 320 U. S. 807-816; 321 U. S. 800-804; 322 U. S. 766-773.

thodox petition for rehearing and the remedy of reconsideration under the Alcohol Regulations is borne out.

The *Prendergast* case (262 U. S. 33, *supra*), which appears to be the leading case in this Court on the point, stressed two factors in support of its conclusion that petitions for rehearing are not essential to judicial review (262 U. S. at 48). The State Commission in that case, the Court noted, was not "required to grant" rehearing and the application for rehearing did not excuse compliance with the original order or otherwise stay its effect unless the Commission so directed. These reasons for dispensing with the need for rehearing are not present under the Alcohol Regulations. The effect of the first order annulling a permit is automatically suspended by the regulations during the period of reconsideration, and the applicant obtains an opportunity to argue a case—for the first time—before the official who issues the order. The reasoning of the *Prendergast* case indicates that these differences would justify a difference in result.

Petitioner contends that the Alcohol Administration Act in express terms authorizes appeal from the District Supervisor's original order. Section 4 (h) provides that "an appeal may be taken by the permittee or applicant for a permit from any order of the Administrator denying an application for, or suspending, revoking, or an-

nulling, a basic permit." If it be assumed that the District Supervisor stands in the place of the Administrator, the original orders on their face came within this language, since they annulled or denied petitioner's application for permits. (R. 421-427). But the same phrase, "any order," when used in the Urgent Deficiencies Act and other statutes has been construed as not including orders which are not final in nature. See *Federal Power Commission v. Metropolitan Edison Co.*, 304 U. S. 375, 384-385, and cases cited. Thus review is not permitted of orders which are merely "preliminary" to the termination of the administrative proceeding. Although Congress intended that orders annulling basic permits be judicially reviewable, there is no reason to believe that it meant that the administrative decision in this field should be reviewed at an interlocutory stage any more than in the case of other administrative orders.

The orders of the District Supervisor prior to an application for reconsideration appear to be final orders of annulment or denial of permits. When read with the regulations, however, they are final only if a party does not wish an opportunity to except to the findings or argue a case before the official making the order, an opportunity which, as has been shown, often affords him relief. The same practical considerations which would lead a court to refuse to review an order of a trial ex-

aminer which will become final if no exceptions are filed would apply here.

Petitioner also contends that the provision for an application for reconsideration is not mandatory but permissive, inasmuch as the regulation states that a permittee *may* file an application, not that he must do so. It is true that the regulation is permissive. But it could not have imposed a mandatory requirement, inasmuch as no one would wish to compel parties to avail themselves of additional protective procedures if they do not desire to do so. This does not mean that they can seek judicial relief without exhausting administrative remedies which are permissive in nature. Many remedies which this Court has held to be essential prerequisites to judicial review were similarly "permissive." *Pittsburgh &c. Ry. v. Board of Public Works*, 172 U. S. 32, 44-45; *Prentis v. Atlantic Coast Line Co.*, 211 U. S. 210, 229-230; *First National Bank v. Weld County*, 264 U. S. 450, 453-455; *Gorham Manufacturing Co. v. State Tax Commission*, 266 U. S. 265, 269-270; *Porter v. Investors Syndicate*, 286 U. S. 461, 468; *Petersen Baking Co. v. Bryan*, 290 U. S. 570, 575; *United States v. Illinois Central R. Co.*, 291 U. S. 457, 463.

CONCLUSION

Although ordinary petitions for rehearing should not be regarded as essential to judicial review, the practical considerations underlying the

doctrine of exhaustion of administrative remedies would justify requiring the filing of the application for reconsideration described in the alcohol regulations.

Respectfully submitted.

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OCTOBER 945.

APPENDIX A

A. THE ACT

The Federal Alcohol Administration Act, 49 Stat. 977 (27 U. S. C. 201) provides in part as follows:

SEC. 2. * * * (d) The Administrator is authorized and directed to prescribe such rules and regulations as may be necessary to carry out his powers and duties. All rules and regulations prescribed by the Administrator shall be subject to the approval of the Secretary of the Treasury.

SEC. 3. * * * (a) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported.

This subsection shall take effect sixty days after the date upon which the Administrator first appointed under this Act takes office.

* * * * *

(c) It shall be unlawful, except pursuant to a basic permit issued under this Act by the Administrator—

(1) to engage in the business of purchasing for resale at wholesale distilled spirits, wine, or malt beverages; or

(2) for any person so engaged to receive or to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so purchased.

SEC. 4. (a) The following persons shall, on application therefor, be entitled to a basic permit:

(1) Any person who, on May 25, 1935, held a basic permit as distiller, rectifier, wine producer, or importer issued by an agency of the Federal Government.

(2) Any other person unless the Administrator finds (A) that such person (or in case of a corporation; any of its officers, directors, or principal stockholders) has, within five years prior to date of application, been convicted of a felony under Federal or State law or has, within three years prior to date of application, been convicted of a misdemeanor under any Federal law relating to liquor; including the taxation thereof; or (B) that such person is, by reason of his business experience, financial standing, or trade connections, not likely to commence operations within a reasonable period or to maintain such operations in conformity with Federal law; or (C) that the operations proposed to be conducted by such person are in violation of the law of the State in which they are to be conducted.

(b) If upon examination of any application for a basic permit the Administrator has reason to believe that the applicant is not entitled to such permit, he shall notify the applicant thereof and, upon request by the applicant, afford him due notice and opportunity for hearing on the

application. If the Administrator, after affording such notice and opportunity for hearing, finds that the applicant is not entitled to a basic permit hereunder, he shall by order deny the application stating the findings which are the basis for his order.

* * * * *

(d) A basic permit shall be conditioned upon compliance with the requirements of section 5 (relating to unfair competition and unlawful practices) and of section 6 (relating to bulk sales and bottling), with the twenty-first amendment and laws relating to the enforcement thereof, and with all other Federal laws relating to distilled spirits, wine, and malt beverages, including taxes with respect thereto.

(e) A basic permit shall by order of the Administrator, after due notice and opportunity for hearing to the permittee, (1) be revoked, or suspended for such period as the Administrator deems appropriate, if the Administrator finds that the permittee has willfully violated any of the conditions thereof, provided that for a first violation of the conditions thereof the permit shall be subject to suspension only; or (2) be revoked if the Administrator finds that the permittee has not engaged in the operations authorized by the permit for a period of more than two years; or (3) be annulled if the Administrator finds that the permit was procured through fraud, or misrepresentation, or concealment of material fact. The order shall state the findings which are the basis for the order.

* * * * *

(g) A basic permit shall continue in effect until ~~suspended, revoked, or annulled~~ as provided herein, or voluntarily surren-

dered; except that (1) if leased, sold or otherwise voluntarily transferred, the permit shall be automatically terminated thereupon, and (2) if transferred by operation of law or if actual or legal control of the permittee is acquired, directly or indirectly, whether by stock-ownership or in any other manner, by any person, then such permit shall be automatically terminated at the expiration of thirty days thereafter: *Provided*, That if within such thirty-day period application for a new basic permit is made by the transferee or permittee, respectively, then the outstanding basic permit shall continue in effect until such application is finally acted on by the Administrator.

(h) An appeal may be taken by the permittee or applicant for a permit from any order of the Administrator denying an application for, or suspending, revoking, or annulling, a basic permit. Such appeal shall be taken by filing, in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, within sixty days after the entry of such order, a written petition praying that the order of the Administrator be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon the Administrator, or upon any officer designated by him for that purpose, and thereupon the Administrator shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order

of the Administrator shall be considered by the court unless such objection shall have been urged before the Administrator or unless there were reasonable grounds for failure so to do. The finding of the Administrator as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Administrator may modify his findings as to the facts by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Administrator shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347). The commencement of proceedings under this subsection shall, unless specifically ordered by the court to the contrary, operate as a stay of the Administrator's order.

APPENDIX B.

The pertinent regulations are Sections 182.245-182.257 of the Treasury Regulations relating to industrial alcohol (26 C. F. R. Cum. Supp. 182.245-182.257, 7 Fed. Reg. 1858, 1889-1890, March 12, 1942) which were made applicable to orders denying, suspending, revoking or annulling basic permits entered under the authority of Sections 4 (b) and 4 (e) of the Federal Alcohol Administration Act (26 C. F. R. Cum. Supp. 171.4d, 5 Fed. Reg. 2549-2550, July 13, 1940). They read as follows:

SEC. 182.245 *Suspension of withdrawals or transportation.*—After citation for revocation of basic permit has been issued, withdrawals of alcohol or specially denatured alcohol by such permittee may, in the discretion of the district supervisor or Commissioner who issues the citation, be suspended or restricted to the quantity which, together with the quantity then on hand, is necessary to carry on legitimate operations under such permit until the final order is made in the revocation proceedings by the Commissioner or district supervisor before whom the same is pending. The district supervisor may, for cause, refuse to issue any purchase or withdrawal permit during such period. In the case of carriers, transportation of tax-free or specially denatured alcohol by the carrier may be similarly suspended or restricted. Secs. 3114, 3121 (b), 3170, I. R. C.)

SEC. 182.249 *Hearing.*—Unless waived by the permittee, or postponed, or transferred to another place, by a written agreement signed by the permittee and the attorney representing the United States and approved and filed by the hearing officer, or the Commissioner, or district supervisor, or by order of the hearing officer, Commissioner, or district supervisor, for good cause shown by either party, the hearing shall be held at the time and place stated in the citation, by the hearing officer named in the citation, or any other duly designated and appointed hearing officer assigned to hold such hearings. (Secs. 3114, 3121- (b), 3170, I. R. C.)

SEC. 182.250 *Evidence at hearing.*—The hearing officer shall, at the beginning of the hearing and throughout the proceedings, require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to facts concerning which there is no substantial dispute. The evidence introduced at the revocation hearing on behalf of the United States or the permittee must consist of affidavits, depositions, duly authenticated copies of records and documents, and oral testimony of witnesses. Affidavits should not be used if the personal attendance of the affiant as a witness is reasonably possible, and the hearing officer may require a showing that the personal attendance of the affiant is not reasonably available before admitting an affidavit in evidence. When the record is made to show that the personal attendance of the witness is not reasonably possible, or such witness will not execute an affidavit or sign a written statement, the official report of the investigator or inspector of the results

of his investigation in that particular regard, identified by him as a witness at such hearing, as having been made immediately following the investigation, may be introduced in evidence.

(a) *Further evidence.*—Before closing a hearing the hearing officer shall definitely inquire of each party whether he has any further evidence to offer, which inquiry and the response thereto must be shown in the record. (Sec. 3114, I. R. C.)

SEC. 182.251 *Stenographic report of testimony.*—(a) *Stenographic record.*—A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact (but not arguments of counsel), at all revocation hearings and hearings on disapproval of applications for basic permits. A transcript of the evidence and proceedings at the hearing shall be made in all cases.

SEC. 182.252 *Arguments and briefs.*—At the conclusion of the testimony the hearing officer may hear arguments of counsel for the Government and for the permittee and may limit the time of such arguments at his discretion, and may also allow briefs to be filed on behalf of either party and fix a time within which the same shall be filed. (Sec. 3114, I. R. C.)

SEC. 182.253 *Findings of the hearing officer.*—Within a reasonable time after the conclusion of a hearing, the hearing officer shall render written findings of fact, in which he shall state briefly the issues of fact involved in the hearing, his conclusions thereon from the evidence adduced, and a summary of the evidence offered by both parties, and immediately transmit the original thereof, together with the original tran-

script of record, to the district supervisor or Commissioner, as the case may be. (Sec. 3114, I. R. C.)

SEC. 182.254 *Order revoking permit or dismissing proceedings.*—If the Commissioner or district supervisor, as the case may be, after consideration of the record of evidence taken at the hearing, approves the findings and conclusions of the hearing officer he shall make an order revoking the permit or dismissing the proceedings in accordance therewith. If he disapproves such findings or conclusions, he shall make such findings and order as in his opinion are warranted by the law and facts of the case. An original copy of the order made by the Commissioner or district supervisor, and a copy of the findings of the hearing officer, if they are approved, or a copy of the findings of the Commissioner or district supervisor, if the findings of the hearing officer are disapproved, shall be forwarded to the permittee or his attorney of record in the proceedings.

(a) *Notice to Commissioner.*—When the district supervisor makes an order revoking a permit, he will furnish a copy of the order to the Commissioner. Should such order be subsequently set aside upon reconsideration, or review by a court of equity, the district supervisor will so advise the Commissioner. (Secs. 3114, 3121 (b), 3170, I. R. C.)

SEC. 182.255 *Reconsideration of order revoking permit.*—(a) *Time for filing application.*—Within 20 days after an order is made by the Commissioner or district supervisor revoking a basic permit, the permittee may file an application with such Commissioner or district supervisor, for a recon-

sideration of such order, on one or more of the following grounds:

- (1) The order is contrary to law, or
- (2) Is not supported by the evidence, or
- (3) Because of newly discovered evidence which the permittee with due diligence, was unable to produce at the hearing.

If the application is based on grounds (1) or (2), the permittee shall specify therein, by reference to the record, in what respects the order is contrary to law or is not supported by the evidence, as the case may be. If the application is based on ground (3), the permittee shall summarize therein the newly discovered evidence and set forth why he was unable to produce such evidence prior to the closing of the record.

(b) *Time of hearing.*—The Commissioner or district supervisor, with whom such application is filed, may hear the application on a date and at a place to be fixed by him. The Commissioner or district supervisor, as the case may be, after hearing such application, may either affirm the order of revocation previously made, or may vacate and set aside such order and dismiss the proceedings or order a new hearing of the evidence before a designated hearing officer.

(c) *Permit privileges.*—During the period above provided for filing application for reconsideration, and until final order is duly made after such reconsideration, if such application is filed within the time provided therefor, the permit involved shall continue in force and effect, except as to restrictions on withdrawals or transportation as may be ordered by the Commissioner or district supervisor, as provided in section

182.245. (Secs. 3114, 3121 (b), 3170 I. R. C.)

* * * * *

SEC. 182.257 *Appeal to the Commissioner.*—Appeal to the Commissioner is not required. However, the Commissioner may, in his discretion, in order to insure uniformity of administrative action, entertain an appeal, after review and reconsideration as provided in section 182.255, from an order of revocation of a basic permit by a district supervisor, if filed with the Commissioner within 10 days of the date of the final order.

(a) *Petition.*—The petition for review must set forth facts tending to show action of an arbitrary nature, or of a proceeding and action contrary to law or regulations. No objection to the final order of the district supervisor will be considered by the Commissioner unless such objection was urged before the district supervisor in the permittee's application for reconsideration, or unless reasonable grounds for failure to urge such objections are set forth in the petition for review.

(b) *Permit Privileges.*—If such request is filed within the required time, the permit involved shall continue in force and effect until the final order by the Commissioner, except as to such restrictions upon withdrawals or transportation as may be imposed by the district supervisor, as provided in section 182.245. (Sec. 3114, I. R. C.)

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SUPREME COURT OF THE UNITED STATES.

No. 51.—OCTOBER TERM, 1945.

Forest E. Levers, Administrator,
etc., Petitioner,

vs.

A. V. Anderson, District Supervisor,
Alcohol Tax Unit.

On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Tenth Circuit.

[November 5, 1945.]

Mr. Justice BLACK delivered the opinion of the Court.

The petitioner's permit to operate a wholesale liquor business under the Federal Alcohol Administration Act, 49 Stat. 977, was annulled by an order of the District Supervisor of the Alcohol Tax Unit of the Bureau of Internal Revenue of the United States. At the same time the Supervisor denied petitioner's applications for an importer's and a new wholesaler's permit. The Supervisor was duly authorized to act in these matters.¹ Section 4(h) of the Act authorizes an applicant or permittee to appeal to the Circuit Court of Appeals within sixty days after the entry of orders denying or annulling the permits. A petition for appeal was filed within sixty days. The Circuit Court of Appeals dismissed the appeal, 147 F. 2d 547, on the ground that petitioner had failed to exhaust his administrative remedies since he had not first filed a motion for reconsideration of the Supervisor's order as permitted by Treasury Regulations, 26 C. F. R. Cum. Supp. 182.255, reading in part as follows:²

¹ 53 Stat. 561; 54 Stat. 1231; 54 Stat. 230, 231; Treasury Order No. 30, 26 C. F. R. Cum. Supp. 174.1a; 5 Fed. Reg. 2212; Treas. Decision 4982, 26 C. F. R. Cum. Supp. 174.4e, 5 Fed. Reg. 2549.

² The Circuit Court of Appeals also referred to the petitioner's failure to take an appeal to the Deputy Commissioner of Internal Revenue, as allowed by Amended Treasury Regulation 182.257. That regulation provides that: "Appeal to the Commissioner is not required. However, the Commissioner may, in his discretion, in order to insure uniformity of administrative action, entertain an appeal after review and reconsideration as provided in § 182.255, from an order of revocation of a basic permit by a district supervisor, if filed with the Commissioner within 10 days of the date of the final order." The government concedes that the first sentence of this regulation, "Appeal to the Commissioner is not required," was added to the regulation as it originally stood for "the deliberate object of making it unnecessary for a party to appeal to the Commission before going to Court." Under these circumstances we do not discuss it further. Cf. *Georgia Braumeister Co. v. Yellowley*, 123 F. 2d 637; *Loeborn v. United States*, 124 F. 2d 545, both decided before the first sentence was added.

"(a) . . . Within 20 days after an order is made by the Commissioner or district supervisor revoking a basic permit, the permittee may file an application with such Commissioner or district supervisor, for a reconsideration of such order, on one or more of the following grounds:

"(1) The order is contrary to law, or

"(2) It not supported by the evidence, or

"(3) Because of newly discovered evidence which the permittee with due diligence, was unable to produce at the hearing."

We thought the question involved important and granted certiorari.

Whatever might be the case in other circumstances, it is clear that where as here judicial review is provided in the Act itself, the petitioner's right of appeal to the courts is to be determined by looking to the statute, the valid regulations promulgated pursuant to it and proven administrative practice throwing light upon their meaning. In construing the Act, however, we must be mindful of the "long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50-51. But this rule does not automatically require that judicial review must always be denied where rehearing is authorized but not sought. This is shown by our past decisions,³ from which we see no reason to depart. Government counsel, appearing for Respondent, do not defend the dismissal of petitioner's appeal on such a sweeping assumption. On the contrary, they assert that motions for rehearing before the same tribunal that enters an order are under normal circumstances mere formalities which waste the time of litigants and tribunals, tend unnecessarily to prolong the administrative process, and delay or embarrass enforcement of orders which have all the characteristics of finality essential to appealable orders.

But Government counsel insist that the rehearing here involved is far more than a formality, and that we should therefore read the Act and regulations as if these barred judicial review prior to an application for a rehearing.⁴ Of course we recognize that

³ *United States v. Abilene & Southern Ry. Co.*, 265 U. S. 274, 280-282; *Prendergast v. New York Tel. Co.*, 262 U. S. 43, 48-49.

⁴ This has been expressly done in several statutes. See for example 49 Stat. 860; 52 Stat. 831. Of course the mere fact that the regulations might bar judicial review is not conclusive, for the court will consider whether these are consistent with the legislative intent.

in a particular administrative pattern new opportunities to challenge afforded by the motion for rehearing may subject an order to such critical administrative review as to reduce it to the level of a "mere preliminary or procedural" status, thereby divesting it of those qualities of administrative finality essential to invocation of judicial review. *Federal Power Commission v. Metropolitan Edison Co.*, 304 U. S. 375, 384-385. But we do not think that is the case here.

The orders here challenged were entered after a hearing and they were "of a definitive character dealing with the merits of a proceeding". *Federal Power Commission v. Metropolitan Edison Co.*, *supra*, 384. The evidence was taken before, and the findings of fact were made by, a hearing commissioner before whom petitioner was represented by counsel. These findings were then approved by the district supervisor who entered the orders. True the findings were approved and the order ~~was~~ made by the district supervisor without an opportunity to petitioner to except to his adverse findings of fact or to present oral argument to him. And a rehearing if granted would have afforded petitioner for the first time an opportunity to see and except to adverse findings of fact and might also have given it a chance to present oral argument to the officer who made the order. But the regulations only provide that the Supervisor "may hear the application" for a rehearing.⁵ No other language of the regulations, and no satisfactory proof of publicly established practice under them, persuades us that the "may" means must, or that the Supervisors were required to hear oral argument. Thus, despite the fact that the regulations permit a stay pending the motion, there is no assurance that a rehearing will be granted so as to afford an opportunity to except to fact findings or argue orally before the Supervisor. Consequently, whatever weight such factors might be accorded in determining administrative finality of the order is absent here.

Our conclusion is that the motion is in its effect so much like the normal, formal type of motion for rehearing that we cannot

⁵ The only relevant provision, 26 C. F. R. Cum. Supp. 182.255, reads:

"(b) The Commissioner or district supervisor, with whom such application is filed, may hear the application on a date and at a place to be fixed by him. The Commissioner or district supervisor, as the case may be, after hearing such application, may either affirm the order of revocation previously made, or may vacate and set aside such order and dismiss the proceedings or order a new hearing of the evidence before a designated hearing officer."

read into the Act an intention to make it a prerequisite to the judicial review specifically provided by Congress. Whether the Circuit Court of Appeals was possessed of power to exercise a discretion to stay its review until an application was made to the Supervisor to grant a rehearing is a question which was not decided and upon which we express no opinion. See *United States v. Abilene & Southern Ry. Co.*, *supra*, 282.

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.